

# Federal Programs (HOME, HTF, CDBG, NSP) Ongoing Rental Compliance Manual: Revision November 2022

## **INTRODUCTION**

This manual is a reference guide for compliance monitoring of rental projects receiving funding from federal programs administered by the Indiana Housing and Community Development Authority (IHCDA). It is designed to answer questions regarding procedures, rules, and regulations that govern these programs. This manual should be a useful resource for owners, developers, management agents, and onsite management personnel. It provides guidance with respect to IHCDA's administration of monitoring for compliance under 24 CFR Part 92, 24 CFR Part 93, and 24 CFR Part 570.

Please note, however, that this manual is to be used only as a supplement to compliance with all applicable laws and regulations. This manual should not be considered a complete guide to the HOME Investment Partnerships Program (HOME), Housing Trust Fund (HTF), Community Development Block Grants (CDBG), or the Neighborhood Stabilization Program (NSP) regulations. The responsibility for compliance with federal program regulations lies with the owner (see disclaimer below).

## **SCOPE OF THIS MANUAL**

This manual discusses the ongoing compliance requirements during the affordability period for rental projects funded with HOME, Housing Trust Fund, CDBG, CDBG-D, and NSP. Readers looking for information on the upfront compliance requirements necessary to get an awarded project through the closeout process should refer to IHCDA's manual entitled *HOME, HTF, & CDBG Program Manual*.

## **\*\*DISCLAIMER\*\***

*The publication of this manual is for convenience only. Your use or reliance upon any of the provisions or forms contained herein does not, expressly or impliedly, directly or indirectly, suggest, represent, or warrant that your project will be in compliance with the requirements of 24 CFR Part 92, 24 CFR Part 93, or 24 CFR Part 570, or other applicable regulations, as amended. The IHCDA hereby disclaims any and all responsibility of liability which may be asserted or claimed arising from reliance upon the procedures and information or utilization of the forms in this manual. You are urged to consult with your own attorneys, accountants, and consultants.*

*Due to the complexity of federal and state regulations and the necessity to consider their applicability to specific circumstances, owner and management agents are strongly encouraged to seek competent legal and accounting advice regarding compliance issues. IHCDA's obligation to monitor for compliance with the requirements of the regulations does not make IHCDA or its subcontractors liable for an owner's noncompliance.*

## Contents

### [Table of Contents](#)

1. [Key Terms and Concepts](#)
2. [Responsibilities](#)
3. [Income Limits, Rent Limits, and Utility Allowances](#)
4. [Compliance Regulations](#)
5. [Qualifying Tenants for Program Units](#)
6. [Compliance Monitoring Procedures](#)
7. [Noncompliance](#)
8. [Glossary](#)

## Available Online

### [Appendices](#)

### [Compliance Forms](#)

# Table of Contents

	<u>PAGE #</u>
PREFACE.....	1
TABLE OF CONTENTS.....	1
SUMMARY OF CHANGES.....	7
1. KEY TERMS AND CONCEPTS .....	9
1.1 Basic Concepts & Affordability Requirements .....	9
1.2 The HOME “Program Rule” and the “Project Rule” .....	9
1.3 Affordability Periods .....	10
1.4 Fixed and Floating Units .....	10
1.5 Types of Rental Housing Projects .....	10
1.6 Applicability of HOME rules to CDBG, CDBG-D, and NSP Properties.....	11
2. RESPONSIBILITIES.....	13
2.1 Responsibilities of IHCD.....	13
A: Review Annual Owner Certifications and Annual Financial Information .....	13
B: Conduct File Monitoring and Physical Unit Inspections.....	13
C: Remedying Noncompliance.....	13
D: Suspension and Debarment.....	13
E: Conduct Training.....	14
F: Possible Future Subcontracting of Functions .....	14
G: Approve HOME and HTF Rents .....	14
2.2 Responsibilities of the Recipient/Owner .....	14
A: Leasing units to eligible tenants in a non-discriminatory manner.....	14
B: Charging no more than the maximum allowable rents .....	14
C: Maintaining the property in habitable condition.....	14
D: Record retention requirements .....	14
E: Being knowledgeable about .....	15
F: Complying with the terms of the Application, Award Agreement, and Declaration/Lien.....	15
G: Reporting to IHCD any changes in ownership or management of the property .....	15
H: Reporting tenant events and submitting Annual Owner Certifications .....	16
I: Training onsite personnel .....	17
J: Notifying IHCD of any noncompliance issues and replacing noncompliant units.....	17
K: Providing all pertinent property information to the management agent .....	17
L: Affirmative Fair Housing Market Plan and Required Fair Housing Documents .....	17
M: Requesting Approvals for HOME or HTF Rents.....	18
N: Submitting Annual Financial Information .....	19
2.3 CHDO Set-aside Requirement .....	19
2.4 Responsibilities of the Management Company & Onsite Personnel.....	19
2.5 Demonstrating “Due Diligence” .....	19

3.	INCOME LIMITS, RENT LIMITS, AND UTILITY ALLOWANCES.....	20
3.1	Income Limits.....	20
	A: Income Limits .....	20
	B: Over-income Households and Temporarily Noncompliant Units (HOME Only) .....	20
3.2	Rent Limits .....	22
	A: Rent Limit Terminology .....	22
	B: Rent Limits for Special Unit Types .....	22
	C: Calculating Rent .....	24
	D: Adjusting Rents due to Tenant Income Increases (HOME Only) .....	25
	E: Allowable Fees and Charges .....	26
	F: Section 8 Rental Assistance .....	28
3.3	Utility Allowances .....	28
	A: General Information .....	28
	B: Approved Utility Allowance Sources .....	28
	C: Updating Utility Allowances .....	30
4.	COMPLIANCE REGULATIONS.....	31
4.1	Rules Governing the Eligibility of Particular Tenants and Uses.....	31
	A: Vacant Units.....	31
	B: Household Composition .....	31
	C: Unborn Children and Child Custody .....	31
	D: Live-in Care Attendants .....	32
	E: Foster Children/Adults.....	32
	F: Special Needs Populations.....	32
	G: HOME Student Rule .....	33
	H: Conflict of Interest: Occupancy of Assisted Units .....	34
4.2	Nondiscrimination .....	34
	A: Fair Housing and Equal Access: Protected Classes and Affirmative Marketing Requirements.....	34
	B: Fair Housing: Reasonable Accommodations and Modifications .....	35
	C: General Public Use.....	37
	D: General Occupancy Guidelines/Household Size.....	37
	E: Tenant Selection Plans.....	38
	F: Marketing Accessible Units.....	39
	G: Violence Against Women Reauthorization Act of 2013 and 2022(VAWA) .....	39
	H: Housing for Older Persons .....	41
	I: Meaningful Access for Persons with Limited English Proficiency .....	42
	J: Religious and Faith-based Organizations .....	42
4.3	HOME/CDBG/NSP/HTF-Assisted Units in Tax Credit Developments.....	43
	A: Combining Programs: Rent and Income Limits and Utility Allowances.....	43
	B: Combining Programs: Certifications and Verifications .....	44
	C: Combining Programs: Student Status .....	44
	D: Combining Programs: Fair Housing and Related Nondiscrimination Requirements .....	45
	E: Combining Programs: IHEDA Monitoring and Inspections .....	45
	F: Combining Programs: Over-income Units (HOME Only).....	45
	G: Combining Programs: Lead-Based Paint Requirements.....	46
4.4	Projects with Development Fund Loans or Grants .....	46
	A: Income and Rent Restrictions .....	46
	B: Income Recertification.....	46

	C: Lien and Restrictive Covenants.....	46
4.5	Suitable for Occupancy .....	47
	A: General Requirements and Recordkeeping.....	47
	B: Casualty Loss.....	47
	C: Ongoing Lead-Based Paint Compliance.....	48
4.6	Permanent Supportive Housing Units for Persons Experiencing Homelessness.....	48
5.	QUALIFYING TENANTS FOR PROGRAM UNITS.....	50
5.1	Tenant Qualification and Certification Process.....	50
	A: Necessary Documentation for a Tenant File.....	50
	B: Tenant Income Certification (TIC) Form .....	51
	C: Correcting Documents.....	51
	D: One Form Per Household or One Form Per Member?.....	52
5.2	Tenant Application and Income Certification Questionnaire .....	52
5.3	Income Verification.....	53
	A: Effective Term of Verification.....	53
	B: Methods of Verification.....	53
	C: Guidance for Specific Income Sources .....	55
	D: Differences in Reported Income .....	60
	E: Zero Income Households .....	60
5.4	Annual Income.....	60
	A: Whose Income and Assets are Counted? .....	60
	B: Income .....	61
	C: Assets.....	61
	D: Computing the Total Household Income.....	62
5.5	Annual and Interim Income Recertification Requirements .....	63
	A: Recertification for HOME and HTF-assisted Units .....	63
	B: Recertification for Units that are Not HOME or HTF-Assisted.....	63
5.6	Lease and Rent Requirements.....	63
	A: Lease or Program Agreement Requirements .....	64
	B: Prohibited Lease Language.....	65
	C: Rents and Security Deposits .....	65
	D: Initial Minimum Term of Lease .....	66
	E: Eviction or Termination of Tenancy.....	66
6.	COMPLIANCE MONITORING PROCEDURES .....	68
6.1	Owner and Management Contacts .....	68
6.2	The Compliance Manual.....	68
6.3	Annual Owner Certification of Compliance.....	68
	A: The Annual Owner Certification.....	68
	B: Online Tenant Event Reporting and Beneficiary Reports .....	69
6.4	IHCDA Review and Inspections.....	70
	A: Tenant File Audits.....	70
	B: Physical Inspections.....	72

	C: Financial Review for HOME & HTF .....	72
6.5	Noncompliance .....	73
6.6	Amendments to Compliance Monitoring Procedures .....	73
6.7	Procedures for the Transfer of Program Units .....	73
7.	NONCOMPLIANCE .....	74
7.1	Types of Noncompliance .....	74
7.2	Consequences .....	74
7.3	Notification of Noncompliance to Owner by IHCD .....	74
7.4	Notification of Noncompliance to IHCD by Owner .....	74
7.5	Correction Period .....	75
7.6	Recapture .....	75
7.7	Suspension and Debarment .....	75
	A: Purpose of Policy .....	75
	B: Scope of Persons Affected .....	75
	C: Definitions .....	76
	D: Suspension Recommendation Based on Failure to Submit Annual Owner Certification .....	76
	E: Suspension Recommendation Based on Failure to Correct Owner Certification Issues .....	77
	F: Suspension Recommendation Based on Failure to Cooperate with File Audit Request .....	77
	G: Suspension Recommendation Based on Failure to Correct Audit Issues .....	77
	H: Suspending an Organization .....	78
	I: Maintaining a Suspension and Debarment List .....	78
	J: Removal from Suspension List / Reinstating an Organization .....	78
	K: Debarment .....	78
	L: Potential Recapture .....	79
7.8	Tenant Misrepresentation or Fraud .....	79
7.9	Owner Fraud .....	80
8.	GLOSSARY .....	81

**APPENDICES**

The Appendices of the Compliance Manual are all provided in electronic format. All Appendices and accompanying forms are located on the [IHCD compliance webpage](#).

**APPENDIX A: HUD Handbook 4350.3, Chapter 5 Excerpts & Technical Guide for Determining Income and Allowances for the HOME Program**

HUD Handbook 4350.3 Chapter 5 Excerpts

HUD Handbook 4350.3 REV-1 Change 4, Chapter 5 Sections 1 & 3

Exhibit 5-1: Income Inclusions and Exclusions

Exhibit 5-2: Assets

Appendix 3: Acceptable Forms of Verification Table

Appendix 6-C: Guidance About Types of Information to Request When Verifying Eligibility and Income

Glossary

**APPENDIX B: Rent and Income Limits**

**APPENDIX C: Utility Allowance Forms and Climate Zone Map**

1. Approved Provider List
2. Application for Approved Utility Allowance Provider
3. Approval Request Letter- Energy Consumption Model
4. Approval Request Letter- HUD Schedule Model
5. Approval Request Letter- Qualified Engineer Estimate
6. IHCD Tenant Usage Data Forms (Flats & Townhomes)
7. Indiana Climate Zones Map

**APPENDIX D: Physical Inspection Guide and Forms**

1. Casualty Loss Form K
2. Example Affidavit
3. Inspection Forms
4. Physical Inspection Compliance Guide and Forms

**APPENDIX E: HUD Guidance**

1. 2013 HOME Final Rule
2. 2013 HOME Final Rule- Applicability Chart
3. 2013 HOME Final Rule- Section by Section Summary
4. Compliance in HOME Rental Projects: A Guide for Property Owners

**APPENDIX F: Fair Housing**

1. Are You A Victim of Housing Discrimination Brochure
2. Fair Housing Poster
3. Federal Register Volume 64, Number 63: Implementation of the Housing for Older Person's Act of 1995
4. HUD 935.2a Affirmative Fair Housing Marketing Plan form
5. HUD/DOJ Guidance on Reasonable Accommodations
6. HUD/DOJ Guidance on Reasonable Modifications

**APPENDIX G: Tenant Guides**

1. FAQ- What is HOME Rental Housing?
2. Tenants' Guide to HOME Rental Housing

**APPENDIX H: VAWA Forms**

1. HUD 5380- Notice of Occupancy Rights under VAWA
2. HUD 5381- Model Emergency Transfer Plan
3. HUD 5382- Certification of Domestic Violence, Dating Violence, Sexual Assault or Stalking
4. HUD 5383- Emergency Transfer Request
5. IHCD VAWA Lease Addendum

**Compliance Forms- Available on [IHCD's compliance webpage](#)**

\*Forms marked with an asterisk apply only to the Rental Housing Tax Credit Program, not the programs covered in in this manual

1. Annuity Verification
2. Asset Verification
3. Bank Verification
4. Child (or Spousal) Support Verification
5. \*REDACTED\*
6. Criminal Background Check Release and Authorization Form
7. Disposal of Assets Certification
8. Employment Verification
- 9A. Lease Addendum for Units Participating in Government Regulated Affordable Housing Programs- Section 42\*

- 9B. Lease Addendum for Units Participating in Government Regulated Affordable Housing Programs- HOME
- 9C. Lease Addendum: Receipt of Required Pamphlets
- 9D. Lease Addendum for Units Participating in Government Regulated Affordable Housing Programs- CDBG, HTF, NSP
10. Lease Renewal Addendum
11. Live-in Care Attendant Certification
12. Live-in Care Attendant Verification
13. Management Telephone Clarification
14. Marital Separation Status Certification
15. Non-Employed Status Certification
16. PHA Income Verification\*
17. Release of Information Authorization
18. Rental Application
19. Self Employment Certification
20. \*REDACTED\*
21. Student Status Verification
22. Tenant Income Certification
23. Income Certification Questionnaire
24. Self Certification
25. Unborn Child Certification
26. Under \$5,000 Asset Certification\*
27. Zero Income Certification & Basic Needs Questionnaire
- 28: 100% Recertification Exemption Tenant Recertification\*
- 29: Property Ownership Change Form
- 30: Property Management Change Form
- 31: Staff Unit Request Form\*
- 32: Extended Use Policy Request Form\*
- 33: Extended Use Policy Amendment to Declaration (\*NOT POSTED ONLINE\*)\*
- 34: Extended Use Policy Annual Household and Rent Update Form\*
- 35: Student Status Self-Certification for Rental Housing Tax Credit Program\*
- 36: Student Status Self-Certification for HOME Program
- 37: Race and Ethnicity Data Reporting Form
- 37A: Race, Ethnicity and Special Needs Data Reporting Form
- 38: HOME/HTF/CDBG/ /NSP Tenant Income Certification
- 39: Recertification Form for CDBG & NSP
- 40: Paystub Income Calculation Worksheet
- 41: Employment Verification Income Calculation Worksheet
- 42: Checklist for Desktop Reviews- RHTC
- 43: Checklist for Desktop Reviews- HOME/HTF/CDBG/NSP
- 44: Lease Addendum: Unit Transfer
- 45: Lease Addendum: Rent Decrease due to Utility Allowance Increase
- 46: HOME & HTF Rent Update Form
- 47: OOR and Homeowner Income Certification
- 48: Ramp Up Indiana Categorical Income Eligibility

# Summary of Changes: November 2022 Revision

Minor formatting, wording, or grammatical changes are not identified in this list. In addition to the items below, all website links referenced in the manual have been revalidated and updated where appropriate.

- 1.1- Clarified that the HTF Program uses a different set of income and rent limits than the HOME program
- 1.3- Prepayment or maturity of a loan does not alter the length of an affordability period
- 2.2D- IHCD permits electronic storage of records in lieu of hardcopies
- 2.2G- Clarified language about IHCD approvals of ownership changes
- 2.2H- Clarified an Annual Owner Certification Submission is not complete until the “Finalize Year” button is clicked.
- 2.2L- Clarified what types of projects should submit an Affirmative Fair Housing Marketing Plan to HUD for review and approval
- 2.3- Added language that HOME projects awarded under the CHDO set-aside must continue to be owned by a CHDO for the duration of the affordability period
- 3.2D Table 2- Added clarification that when a HOME/RHTC unit exceeds 80% AMI, the unit may still need to be redesignated from low-HOME to high-HOME
- 3.2E(2)- Added fee example for fees for making online payments
- 3.2F- Changed language that required both HUD Form 50058 and HAP contract to instead require HUD Form 50058 or HAP contract. Both documents are not required.
- 4.1D- Removed language that a spouse can never be considered a live-in aide
- 4.2A(1)- Updated protected class list to include ancestry as a protected class under the Indiana Fair Housing Act
- 4.2A(1)- Added reference to 2021 HUD memo “Implementation of Executive Order 13988 on Enforcement of the Fair Housing Act” which prohibits discrimination on the basis of sexual orientation or gender identity
- 4.2B(1)- Added updated assistance animal guidance from FHEO Notice 2020-01
- 4.2E- Clarified that all projects must have a written tenant selection plan and that IHCD will monitor the plan. This was existing policy but is now clearer in the manual.
- 4.2E- Minimum income requirements and previous eviction history cannot be applied as tenant selection screening criteria for permanent supportive housing units for persons experiencing homelessness
- 4.2G- Clarified applicability of the IHCD VAWA lease addendum forms
- 4.2G- Updated VAWA language based on language from the VAWA Reauthorization of 2022. This includes new language on non-retaliation, non-coercion, and protection to report as well as a note that HUD and the Attorney General shall enforce VAWA in a manner consistent with Fair Housing enforcement.
- 4.3F- Added clarification that when a HOME/RHTC unit exceeds 80% AMI, the unit may still need to be redesignated from low-HOME to high-HOME
- 4.6- Added new section on requirements for permanent supportive housing units for persons experiencing homelessness
- 5.1A- IHCD accepts electronic signatures from tenants, owner agents, and third-party verifiers
- 5.1A- Changed language that required both HUD Form 50058 and HAP contract to instead require HUD Form 50058 or HAP contract. Both documents are not required.
- 5.2- Revised version of the Income Certification Questionnaire (Revised June 2022) must be used for all files with an effective date on or after January 1, 2023.
- 5.3(C)(1)- Added recent COLA increases
- 5.3(C)(4)- Revised employment income requirements. IHCD no longer requires a YTD calculation.
- 5.3(C)(4)- Revised employment income requirements. If verification indicates a range of hours worked, IHCD will use the average, not the highest in the range.
- 5.3E- Clarified that a zero-income certification form is required, not just advised, for households in which all members are claiming zero income

- 5.4C- Added clarifying language from HUD Handbook 4350.3 regarding assets not effectively owned and assets owned jointly
- 5.6A- Clarified that programmatic requirements that must be included in the lease may be included within a lease addendum and are not required to be in the body of the main lease document
- 5.6A- Clarified applicability of the IHEDA VAWA lease addendum forms
- 5.6E- Added mention of eviction prevention and link to IHEDA's Eviction Prevention and Low Barrier Screening webpage
- 6.1- Clarified that changes in contact information only (not a change to an ownership or management entity) can be reported via email and do not require an Ownership or Management Change Form
- 6.3A- Clarified an Annual Owner Certification Submission is not complete until the "Finalize Year" button is clicked.
- 6.4A- Changed language that required both HUD Form 50058 and HAP contract to instead require HUD Form 50058 or HAP contract. Both documents are not required.
- 6.4C- Added exception that if all necessary financial information can be gathered from the Annual Owner Certification, IHEDA does not need to request financial statements

# Section 1: Key Terms and Concepts

## Part 1.1 Basic Concepts & Affordability Requirements

HUD uses the term “low-income” for households at or below 80% AMI and “very low-income” for households at or below 50% AMI.

Federal HOME regulations allow for two types of HOME-assisted units:

- **High HOME** units are HOME-assisted units reserved for households at or below 80% AMI.
- **Low HOME** units are HOME-assisted units reserved for households at or below 50% AMI.

In their funding application, an owner usually agrees to meet additional state specific area median income (AMI) levels. Such additional restrictions are codified in the lien/restrictive covenant recorded against the property, and the owner must continue to meet these requirements throughout the project’s affordability period.

- All units committed to serving households with incomes less than 30% AMI (Low HOME) must be rented to households with incomes less than or equal to 30% AMI at time of move-in. \*NOTE: All HTF-assisted units must be 30% AMI.
- All units committed to serving households with incomes less than 40% AMI (Low HOME) must be rented to households with incomes less than or equal to 40% AMI at time of move-in.
- All units committed to serving households with incomes less than 50% AMI (Low HOME) must be rented to households with incomes less than or equal to 50% AMI at time of move-in.
- All units committed to serving households with incomes less than 60% AMI (High HOME) must be rented to households with incomes less than or equal to 60% AMI at time of move-in.
- All units committed to serving households with incomes less than 80% AMI (High HOME) must be rented to households with income less than or equal to 80% AMI at time of move-in.
- NOTE: Certain NSP or CDBG-D projects may have units designated at 120%. For these projects, all units committed to serving households with incomes less than 120% AMI must be rented to households with income less than or equal to 120% AMI at time of move-in. 120% limits will never apply to HOME, HTF or CDBG.

Federal Housing Trust Fund (“HTF”) regulations require all HTF-assisted units to serve households with incomes at or below the 30% AMI limit for the HTF program. The HTF program uses different income and rent limits than the HOME program.

All awards must be secured throughout the affordability period by a written, legally binding, recorded declaration of affordability commitment.

## Part 1.2 The HOME “Program Rule” and the “Project Rule”

**The HOME “Program Rule”** states that at initial occupancy, 90% of HOME-assisted units must be occupied by households with incomes at or below 60% of AMI.

**The HOME “Project Rule”** states that all HOME developments with five or more HOME-assisted units must have at least 20% of the HOME-assisted units occupied by households at or below 50% of AMI for the duration of the affordability period.

\*Note: The Program Rule and Project Rule apply only to HOME funded properties. Properties funded with HTF, CDBG, CDBG-D, or NSP are not subject to the program rule or project rule.

## Part 1.3 Affordability Periods

The length of time for which a project must continue to remain in program compliance and meet its specified requirements (as outlined in the application and restrictive covenants) is called the affordability period.

**The affordability period begins after project completion.** Project completion is defined as the date that all necessary title transfer requirements and construction work have been performed; the rehabilitation completed complies with the requirements of 24 CFR 92.2 and the property standards of 24 CFR 92.251 or 24 CFR 570 and the stricter of the local rehabilitation standards or the Indiana State Building Code; the final drawdown has been disbursed for the project; and the project completion information has been entered into the disbursement and information system established by HUD.

The following chart defines the affordability periods that apply to HOME, NSP, CDBG, and CDBG-D funded projects, including permanent rental, permanent supportive housing, and transitional housing. The affordability period for HTF-assisted units is always 30 years, regardless of the amount of assistance per unit:

HOME or NSP award amount per unit	Affordability Period
Under \$15,000 per unit	5 years
\$15,000 - \$40,000 per unit	10 years
Over \$40,000 per unit – or – any rehabilitation/refinance combination activity	15 years
New construction or acquisition of newly constructed housing	20 years

CDBG or CDBG-D award amount per unit	Affordability Period
Under \$15,000 per unit	5 years
\$15,000 - \$40,000 per unit	10 years
Over \$40,000 per unit	15 years
New construction (regardless of amount)* - CDBG-D only	20 years

(\*CDBG cannot be used for new construction housing activities, but CDBG-D can)

Note: An IHEDA award may be made in the form of a loan. Prepayment or maturity of a loan prior to the end of the affordability period does not affect the affordability period end date.

## Part 1.4 Fixed and Floating Units

A development's Award Agreement will outline whether the program assisted units are fixed or floating units.

**Fixed units:** The program assisted units remain the same throughout the affordability period. Specific units are designated as assisted units and those units will remain assisted throughout the affordability period. Any non-assisted units at a property with fixed program units will remain non-assisted and can be rented without regard to rent and income restrictions.

**Floating units:** The program assisted units may change during the affordability period. The unit mix can be changed during the affordability period so that the total number of assisted units meets the requirements set out in the application and recorded declaration. Each substituted unit must be comparable in terms of size, features, and number of bedrooms to the originally designated program assisted unit.

Note: If all units in a property are program assisted units, then the units are considered fixed units. In a property with a mix of program assisted and non-assisted units, the assisted units may be fixed or floating.

## Part 1.5 Types of Rental Housing Projects

### Permanent Rental Housing

The purpose of this activity is to provide funding for affordable long-term housing that will be rented to income-eligible households. Eligible activities include acquisition, rehabilitation, or new construction.

Permanent rental housing units may not be used for temporary or emergency housing at any time. Each household moving into a permanent rental housing unit must be certified as income eligible and must enter into a lease agreement. For more information on leases, see Part 5.6.

Eligible permanent rental housing includes assisted living facilities that meet IHCD's definition. IHCD defines an assisted living facility as a living arrangement in which services are available to residents (e.g., meals, laundry, medication reminders, etc.) but the residents still live independently. Services provided cannot be mandatory as a condition of occupancy. Residents of such facilities pay a regular monthly rent and pay additional fees for the services that they desire. The fees for any services that are mandatory (i.e., services that are a condition of occupancy) must be included in the gross rent calculation.

### **Permanent Supportive Housing**

The purpose of this activity is to provide funding for affordable long-term housing and supportive services for persons experiencing homelessness or at risk of homelessness. Eligible activities include acquisition, rehabilitation, or new construction. Services provided must be voluntary, i.e., acceptance of services cannot be mandatory as a condition of occupancy.

Permanent supportive housing units may not be used for temporary or emergency housing at any time. Each household moving into a permanent supportive housing unit must be certified as income eligible and must enter into a lease agreement. For lease requirements, see Part 5.6. For additional information on permanent supportive housing requirements, see Part 4.6

### **Transitional Housing**

Transitional housing is designed to provide short-term, time-limited housing and appropriate supportive services to persons, including but not limited to, deinstitutionalized individuals with disabilities, individuals or families experiencing homelessness, and survivors of domestic violence. The intent of transitional housing is to facilitate the movement of individuals and families to independent living (e.g., permanent rental housing), generally within 24 months.

Transitional housing units may not be used for temporary or emergency housing at any time. Each household moving into a transitional housing unit must be certified as income eligible and must enter into a program agreement. For more information on program agreements, see part 5.6.

### **Emergency shelters and migrant farm worker housing**

CDBG funds can be used to fund emergency shelters (including youth shelters) and seasonal migrant farm worker housing. These projects provide temporary housing and as such do not utilize lease agreements. Instead, all individuals entering a shelter or migrant farm worker housing must sign a program agreement. Additionally, individuals residing in shelters and migrant farm worker housing are assumed income eligible and do not have to be income certified. For more information on program agreements, see Part 5.6.

## **Part 1.6 Applicability of HOME Rules to CDBG, CDBG-D, and NSP Properties**

Because the CDBG, CDBG-D, and NSP programs do not provide much guidance or regulation on rental project compliance, IHCD generally adopts the HOME rental compliance requirements for its CDBG, CDBG-D, and NSP funded rental properties. The HOME rental requirements apply to CDBG/CDBG-D/NSP rental properties with the following exceptions:

- Part 1.1- the concept of Low HOME and High HOME units only applies to HOME projects.
- Part 1.2- the "Program Rule" and "Project Rule" only apply to HOME projects.
- Parts 2.1G, 2.2N, & 3.2- the requirement to annually request approval of rents only applies to HOME and HTF projects.
- Parts 3.1C & 4.3F- the temporary noncompliance over-income rule for households exceeding 80% AMI at recertification only applies to HOME units
- Part 3.2D- the rent adjustment rule for households exceeding 80% AMI at recertification only applies to HOME units
- Part 3.3B- the rule about only using project-specific utility allowances only applies to HOME projects that received a commitment of HOME funds after 8/23/13

- Part 4.1G- the student status rule only applies to HOME projects.
- Part 4.2G- VAWA is not applicable to CDBG, CDBG-D, or NSP projects.
- Part 6.4C- Financial oversight requirements only apply to HOME or HTF projects with 10 or more total units.

## Section 2: Responsibilities

The entities involved in project compliance include IHCD, the owner and the management company/agent including onsite management personnel. The various responsibilities for these entities are set forth below.

### Part 2.1 Responsibilities of IHCD

IHCD allocates and administers the HOME, HTF, CDBG, CDBG-D, and NSP housing programs for the State of Indiana. IHCD's responsibilities are as follows:

#### A. Review Annual Owner Certifications and Annual Financial Information

IHCD will review an Annual Owner Certification for each development. For information on Annual Owner Certifications, see Part 6.3.

In addition, for each HOME or HTF project with 10 or more units (total units, not assisted units), IHCD must annually review the financial condition of the project to determine "the continued financial viability of the housing" in accordance with the Financial Oversight requirements of the HOME and HTF regulations. IHCD must take actions, as feasible, to correct any problems identified through financial review. IHCD staff will contact each affected property annually to request the necessary information. For additional information on Financial Review, see part 6.4(C).

#### B. Conduct File Monitoring and Physical Unit Inspections

All developments will be subject to tenant file monitoring and physical inspections once every three years, as further described in Part 6.4. However, IHCD reserves the right to monitor/inspect more frequently, with or without notification to the owner. Decisions to monitor/inspect more frequently may be based on tenant complaints or IHCD's assessment that a project is high risk.

Previously, the frequency of monitoring and inspection varied based on the number of units (1-4 units once every 3 years, 5-25 units once every 2 years, or 26+ units annually). This method was discontinued starting with the 2018 monitoring/inspection cycle.

Tenant File Audits - Information to be reviewed will include, but is not limited to, annual Tenant Income Certifications, Income Questionnaire, documentation received to support those certifications (i.e., income and asset verifications), rent and utility allowance records, leases, tenant selection plans, etc. Owners must provide organized tenant files to IHCD with documentation in chronological order. For more information on file audits, see Part 6.4.

Physical Unit Inspections – IHCD staff or an IHCD contractor will conduct a physical inspection to ensure that the development is suitable for occupancy. For information on maintaining a property in a condition that is suitable for occupancy, see Part 4.5.

IHCD retains the right to perform a file review and/or physical inspection of any building and/or unit at any time during the Affordability Period, with or without notice to the owner.

#### C. Remedying Noncompliance

When noncompliance is discovered, IHCD will work with the owner and/or management agent to remedy the issue during a correction period. If necessary, IHCD will recapture funds. For information on recapture, see part 7.6.

#### D. Suspension and Debarment

IHCD may suspend or debar entities from participation in IHCD programs if noncompliance issues are recurring or egregious, funds are misused, an entity engages in fraudulent activity, etc. Suspension or debarment from the program may not only affect the non-compliant award, but also other awards that the entity is currently associated with. Additionally, suspension or debarment will affect future applications submitted to IHCD. For information on suspension and debarment, see Part 7.7.

## **E. Conduct Training**

IHCDA will conduct or arrange compliance trainings and will disseminate information regarding the dates and locations of such trainings to its partners.

## **F. Possible Future Subcontracting of Functions**

IHCDA may, in its sole discretion, decide to retain an agent or private contractor to perform some of the responsibilities listed above. Owners will be notified of the name and contact persons of the contractor.

## **G. Approve HOME and HTF Rents**

IHCDA must approve, at least annually, the rents to be charged by all HOME or HTF-assisted projects. See Part 3.2 for additional information on approval of rents for HOME-assisted units. This rule only applies to the HOME and HTF programs.

## **Part 2.2 Responsibilities of the Owner**

The owner must certify that all program requirements have been met. Any violation of program requirements could result in the owner being required to repay federal or state funds and may jeopardize future applications for IHCDA funding.

The responsibilities of owners include, but are not limited to:

### **A. Leasing units to eligible households in a non-discriminatory manner**

For more information on leasing requirements, see Part 5.6. For more information on fair housing and tenant selection plans, see Part 4.2.

### **B. Charging no more than the maximum allowable rents (including utility allowances and non-optional fees)**

For more information on rent limits and maximum allowable rent, see Part 3.2.

### **C. Maintaining the property in habitable condition**

The owner is responsible for ensuring that the development is maintained in a decent, safe, and sanitary condition in accordance with appropriate standards. Failure to do so is an act of noncompliance. See Part 4.5.

### **D. Record retention requirements**

Written award agreements must be retained for five years after the agreement terminates.

Tenant files must be retained for the most recent five years throughout the affordability period, until five years after the end of the affordability period (to determine the length of the affordability period, see Part 1.3). However, if any litigation, claim, negotiation, audit, monitoring, inspection, or other action has been started before the expiration of the required retention period, the records must be maintained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.

IHCDA permits the electronic storage of records in lieu of hardcopies, as long as the electronic storage system includes reasonable controls for accuracy and reliability and maintains documents that are accessible, legible, and readable.

The records must include the following:

- The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit)
- The number of residential rental units that are program assisted units and if those units are considered fixed or floating

- The rent charged on each residential rental unit and the applicable utility allowance. Utility allowance records must include copies of the annual supporting.
- The number of occupants in each program assisted unit
- The unit vacancies in the building, documentation of marketing efforts, and information that shows when and to whom the next available units were rented (this information must include the unit number, tenant name, move-in dates, and move-out dates for all tenants, including market rate tenants)
- The Tenant Income Certification (TIC) and Income Questionnaires for each eligible household
- Documentation to support each eligible household's income certification
- Any local health, safety, or building code violation reports or notices issued by the State or local government unit responsible for making local health, safety, or building code inspections

#### **E. Being knowledgeable about:**

The owner is expected to know and maintain records regarding:

- Expiration dates, closeout dates, and the duration of the affordability period
- The award number and address of each building in the development
- The applicable income and rent restriction for each unit (30%, 40%, 50%, 60% or 80%)
- Whether program-assisted units are considered fixed or floating units
- The terms under which the award was made and the requirements applicable to the funding policy under which the award was made
- Any restrictions required in the award agreement and recorded lien/restrictive covenant, including required amenities, services, design features, and special population targeting

The items listed above can be found in the application, award agreement, recorded lien/restrictive covenant, and/or the closeout letter for the project. To ensure compliance, it is important that the owner and management agents have copies of these documents and are familiar with the terms defined within.

#### **F. Complying with the terms of the Application, Award Agreement, and Lien/Restrictive Covenant**

In addition to meeting rent and income restrictions, this obligation includes providing the agreed upon services, amenities, design features, and any special population targeting throughout the affordability period. IHCDCA will monitor for compliance with these elections.

#### **G. Reporting to IHCDCA any changes in ownership or management of the property**

If a change in ownership is proposed, a detailed description of the change must be provided in writing to IHCDCA for approval. IHCDCA must approve any change in ownership or transfer request that occurs before the expiration of the affordability period. If the request for an ownership change is on a HOME project that received HOME funds under the CHDO set-aside, IHCDCA must ensure that the project will continue to meet the CHDO set-aside requirements.

After IHCDCA approval, final changes in ownership must be reported via IHCDCA's "Property Ownership Change Form." If the new ownership will not maintain compliance for the duration of the affordability period, the original award recipient will be subject to recapture.

Changes in management company must be reported via IHCDCA's "Property Management Change Form."

In addition, the owner must notify IHCDCA immediately in writing of any changes in ownership or management contact information including contact person's name, address, e-mail address, and telephone number.

## H. Reporting tenant events and submitting Annual Owner Certifications

### 1. Annual Owner Certification of Compliance / IHCD Online Management System

The owner must annually certify compliance to IHCD, under penalty of perjury, for each year of the affordability period. The Annual Owner Certification of Compliance is due on or before January 31<sup>st</sup> of each year and certifies information for the preceding 12-month period. The report covers the period from January 1-December 31 of each year and is due to IHCD by the close of business January 31<sup>st</sup> of the next calendar year. Complete submission includes the Owner Certification and finalization of tenant events in the online reporting system. Projects with Rental Housing Tax Credits must also submit payment of the annual RHTC monitoring fee. A submission is not complete until the owner representative completes the finalization process by selecting "Finalize Year" in the online reporting system.

The first annual owner certification is due by January 31<sup>st</sup> of the year following the year of the award's closeout date (i.e., the first year of the affordability period). For example, if the affordability period for a project begins in 2022, the project owes a 2022 Annual Certification which is due by January 31, 2023. However, the owner must begin reporting tenant events in the online system with the first tenant move-in.

The [Indiana Housing Online Management System](#) was designed as a tool to submit Annual Owner Certifications and conduct compliance checks. Effective January 1, 2009, all IHCD assisted rental developments (\*EXCEPT emergency shelters, youth shelters, and migrant farm worker housing projects) are required to enter tenant events using the Indiana Housing Online System. Tenant events include move-ins, move-outs, annual recertification, unit transfers, rent and utility allowance changes, household composition updates, and student status updates. Tenant events that must be reported online do not include interim recertification performed for other programs, such as Section 8 or Rural Development. **IHCD requires the owner to enter all tenant events into the system within 30 days of the event date.**

It is mandatory that all tenant events be submitted electronically using the Indiana Housing Online Management System for all developments that contain IHCD assisted units (e.g., HOME, HTF, CDBG, CDBG-D, NSP, Tax Credits, Section 1602, TCAP, Bonds, and/or Development Fund/Trust Fund). This online tenant event reporting process eliminates the former process of submitting a hardcopy "Tenant Beneficiary Spreadsheet" (EXCEPT for emergency shelters, youth shelters, and migrant farm worker housing projects).

To use the rental reporting system or register to become a user, please visit the [Indiana Housing Online Management System](#) and contact IHCD's Data and System Specialist with any questions.

IHCD will set up the buildings for a project in the online reporting system and approve one project owner web user. It is then the responsibility of that project owner web user to approve designated management web users and to set up the individual units within the buildings.

### 2. HMIS Reporting

All IHCD funded emergency shelters, youth shelters, transitional housing, permanent supportive housing, and units set-aside for persons experiencing homelessness in permanent rental housing projects are required to report through IHCD's Homeless Management Information System (HMIS). For information on HMIS see [IHCD's HMIS webpage](#). This requirement is in addition to Annual Owner Certification reporting.

### 3. Summary of Reporting Requirements

- a) **Rental Housing Units (Transitional Housing, Permanent Supportive Housing, and Permanent Rental Housing):** All tenant events and the Annual Owner Certification of Compliance must be submitted electronically using the Indiana Housing Online Management System. Hardcopies are not accepted. For information on Annual Owner Certifications see Part 6.2. For transitional housing, permanent supportive housing, and units set-aside for persons experiencing homeless in permanent rental housing projects, reporting is also required in HMIS.

- b) **Emergency Shelter and Youth Shelters**- Submit the Annual Beneficiary Report via Excel spreadsheet along with the hardcopy Annual Owner Certification forms. For information on Annual Owner Certifications see Part 6.2. Tenant events must also be entered into HMIS.
- c) **Migrant Farm Worker Housing**- Submit the Annual Beneficiary via Excel spreadsheet along with the hardcopy Annual Owner Certification forms. For information on Annual Owner Certifications see Part 6.2.

## I. Training onsite personnel

The owner must ensure that onsite property management agents know, understand, and comply with all applicable federal and state rules, regulations, and policies governing the development, including all elections made in the application, award agreement, and lien/restrictive covenant.

As a best practice, IHCD encourages the owner to make certain that the development's property management and compliance personnel are familiar with the most current edition of the IHCD Compliance Manual, the compliance forms and information on [IHCD's compliance manual webpage](#), and the online reporting requirements through the [Indiana Housing Online Management System](#) (for more information on online reporting requirements see Part 2.2 H above).

## J. Notifying IHCD of any noncompliance issues and replacing noncompliant units

If the owner determines that a unit, building, or an entire development is out of compliance with program requirements, IHCD should be notified immediately. The owner must formulate a plan to bring the development back into compliance and advise IHCD in writing of such a plan.

The owner must keep documentation outlining: the nature of the noncompliance issue, the date the noncompliance issue was discovered, the date that noncompliance issue was corrected, and a description and proof of the actions taken to correct the noncompliance.

Additionally, for HOME compliance the owner is responsible for replacing temporarily noncompliant units (units where the household exceeds 80% AMI) as per the guidelines in Part 3.1 C. This rule only applies to HOME-assisted units.

## K. Providing all pertinent property information to the management agent

To ensure compliance, the owner should provide the management agent with copies of at least the following documents: the application for rental housing financing, award agreement, recorded lien/restrictive covenant, closeout letter, and the IHCD application policy under which the project was awarded funds.

If there is a change in management companies, the owner is responsible for providing all information and previous tenant files to the new management company. If there is a change in ownership, the existing/previous owner is responsible for providing all award documentation and previous tenant files to the new owner.

## L. Affirmative Fair Housing Marketing Plan and Required Fair Housing Documents

### 1. Affirmative Fair Housing Marketing Plans

An Affirmative Fair Housing Marketing Plan (AFHMP) is required for all awards containing five (5) or more program-assisted units. The AFHMP must be created using HUD Form 935.2A to identify the populations least likely to apply for housing and the outreach/marketing efforts that will be utilized to reach that population.

For the programs covered by this compliance manual, HUD will not approve the AFHMP and as such the AFHMP should **not** be submitted to HUD to review and sign. An AFHMP should only be submitted to HUD for review and approval if one of the following HUD funding sources is included in the development:

- Section 221 (d)(2) Homeownership Assistance
- Section 221(d)(3) Below-Market Interest Rate

- Sections 235 and 236
- Sections 232, 234(c) and 213 - Condominium and Cooperative Housing
- Section 232 - Nursing Homes and Intermediate Care Facilities
- Section 207 - Mobile Home Courts
- Sections 207, 220, 221(d)(3) and (4) – Multifamily Rental Housing
- Rental Assistance Payment (RAP) and Rent Supplement
- Section 8 Project Based Assistance
- Section 202 Projects with Section 8 Assistance
- Rural Housing Section 515 Projects with Section 8 Assistance
- Loan Management Set Aside (LMSA)
- Property Disposition Set-Aside (PDSA)
- Section 202 with 162 Assistance – Project Assistance Grants (Section 202 PACs)
- Section 202 with Project Rental Assistance Contracts (Section 202 PRACs)
- Section 202 without Assistance (Income Limits Only)
- Section 203(b) and (1) - One-to-Four-Family Mortgage Insurance for Homeowners
- Section 811 with Project Rental Assistance Contracts (Section 811 PRACs)

The AFHMP must include the following information.

- i. What segment has been determined the least likely to apply based on market demographics?
  - Families with children
  - Persons with disabilities
  - Specific race, ethnic group, religion, etc.
- ii. What residency preferences are in place for the property?
- iii. What marketing efforts are being made to reach those least likely to apply and how are marketing activities evaluated to determine if they are successful?
- iv. Are the Fair Housing and Equal Opportunity Employment posters prominently displayed and where are they displayed? Is the AFHMP made available for public inspection and where is it displayed? Does the project site sign contain the HUD approved Equal Housing Opportunity logo, slogan, or statement and where is the sign displayed?

AFHMPs must be updated at least once every five years or more frequently when there are significant changes in the demographics of the local housing market area as described in the instructions for Part 9 on Form 935.2A. All updated AFHMPs must be submitted to IHCD with the next Annual Owner Certification of Compliance. Form 935.2a is available in Appendix F.

## 2. Required Brochures and Poster

All households must be given the Fair Housing brochure entitled “Are You a Victim of Housing Discrimination” at the time of move-in. The household must sign documentation acknowledging the receipt of this brochure at time of move-in, and this receipt must be maintained in the household’s file.

Additionally, all owners are required to post the Fair Housing and Equal Opportunity poster onsite in the leasing office and/or other common areas.

The above referenced brochure and poster are available in Appendix F.

## M. Requesting Approvals for HOME or HTF Rents

The owner must submit requests for any changes in rent to IHCD for approval. At least annually at the time that new rent limits are released by HUD, the owner must provide an update to IHCD on its proposed rents for HOME or HTF-assisted units (even if they are proposing no change). See Part 3.2 for additional information on HOME/HTF Rent Updates and reporting requirements.

## **N. Submitting Annual Financial Information**

Owners of HOME or HTF-assisted projects with 10 or more units (total units, not assisted units) must annually submit property financials for IHCDCA review. See Part 6.4(C) for additional information.

### **Part 2.3 CHDO Set-aside Requirement**

Per 24 CFR 92.300, IHCDCA must reserve no less than 15% of its annual HOME allocation for projects to be owned, developed, or sponsored by IHCDCA certified Community Housing Development Organizations (CHDOs). The terms owned, developed, and sponsored are specifically defined in 24 CFR 92.300.

HOME projects awarded under the CHDO set-aside must continue to be owned by a CHDO for the duration of the affordability period. In the event of a transfer of ownership or restructuring, IHCDCA must ensure that the CHDO or a replacement CHDO continues to own the project.

### **Part 2.4 Responsibilities of the Management Agent & Onsite Personnel**

The management agent and all onsite personnel are responsible to the owner for implementing all program requirements.

- Anyone who is authorized to lease apartment units to tenants should be trained on all federal and state laws, rules, and regulations governing certification and leasing procedures, including program regulations, Fair Housing and nondiscrimination, and Indiana State Code regarding leasing requirements.
- The management company must provide information, as needed, to IHCDCA and submit all required reports and documentation in a timely manner. IHCDCA requires that all tenant events be reported via the Indiana Housing Online Management rental reporting system within 30 days of the event date. For information about the online reporting system requirements, see Part 2.2(H).
- Management agents must be onsite during IHCDCA onsite file monitorings and physical inspections to provide access to necessary documentation and to units.
- Management must enter each property into the [Indiana Housing Now](http://indianahousingnow.org) online housing search database at [indianahousingnow.org](http://indianahousingnow.org).
- Management must enter data into HMIS if the property is an emergency shelter, transitional housing, permanent supportive housing, or for units designated for occupancy by persons experiencing homelessness in other rental housing developments.

### **Part 2.5 Demonstrating “Due Diligence”**

The owner is ultimately responsible for compliance and proper administration of the program and all award requirements. IHCDCA expects all owners and management agents demonstrate “due diligence,” hereby defined as the appropriate, voluntary efforts to remain in compliance with all applicable Federal and State rules and regulations. Due diligence can be demonstrated through business care and prudent practices and policies. Part of due diligence is the establishment of internal controls, including but not limited to separation of duties, adequate supervision of employees, management oversight and review (internal audits), third party verifications of tenant income, independent audits, and timely recordkeeping.

Due diligence also includes keeping up to date with IHCDCA policies by reading amended IHCDCA Compliance Manuals, following IHCDCA updates via RED notices, and attending IHCDCA sponsored compliance trainings when available. These are all examples of voluntary efforts that owners and management agents can take to remain in compliance.

Another way in which the management agent can demonstrate a commitment to due diligence is by establishing and maintaining a consistent file order. Consistent and well-organized files make it easier for management to recognize when documentation is missing and allow for easier audits.

If noncompliance issues are discovered, IHCDCA may ask the owner and management agent to demonstrate due diligence by showing that the proper internal policies and procedures are in place to prevent noncompliance from occurring/recurring. It is understood that mistakes may occur from time to time, but it is the responsibility of the owner and management agent to have policies in place to minimize and remedy these errors.

## Section 3: Income Limits, Rent Limits, and Utility Allowances

To remain in compliance, program units must be income and rent restricted. This section provides guidance on how to properly apply income limits, rent limits, and utility allowances. Income and rent limit charts are provided in Appendix C.

### Part 3.1 Income Limits

#### A. Income Limits

All program units must be occupied by income qualified households, based on the income limits published annually by HUD. When new limits are published annually by HUD, IHCD will post the new income limits and corresponding rent limits on its website via a RED Notice. This information is provided by IHCD only for the owner's convenience as a courtesy. However, it is the responsibility of the owner, not IHCD, to verify its accuracy.

The owner must ensure that the correct set of income limits is being utilized based on the applicable funding sources. IHCD releases separate sets of income limits for different programs as required by HUD. For example, each year IHCD releases separate income limits charts for the tax credit program, the HOME and CDBG program, and the HTF program. The limits may differ across programs even in the same county for the same year.

Owners may not anticipate increases in income limits and corresponding rents. Limits remain in effect until new annual limits are officially published by HUD. New limits must be implemented by the HUD released implementation date.

Household income must be determined in a manner consistent with the 24 CFR Part 5.609 methodology (commonly known as the "Part 5 Methodology" or "Section 8 methodology") of calculating annual income as described in Chapter 5 of the HUD Handbook 4350.3. When determining if a household's income is at or below the applicable income limit, the earned income from each adult household member 18 years of age or older and the unearned and asset income of all members of household (regardless of age) must be included in the total household income calculation. For complete rules on calculating income and assets, see Chapter 5 of HUD Handbook 4350.3 as well as the *Technical Guide for Determining Income and Allowances for the HOME Program*. Both resources are available in Appendix A.

#### B. Over-income Households and Temporarily Noncompliant Units (\*\*HOME ONLY\*\*)

**\*NOTE: The following guidelines apply only to HOME-assisted units.**

A household residing in a HOME-assisted unit is considered to be "over-income" when total household income exceeds 80% of AMI, or when total household income exceeds 50% AMI in a Low-HOME unit (a unit designated at 30%, 40%, or 50% AMI). When a household becomes over-income, the HOME-assisted unit it occupies is considered to be "temporarily noncompliant." Temporary noncompliance is permissible and does not penalize the owner as long as the correct steps are followed to restore the proper unit mix. Certain rules go into effect to correct the unit mix depending on whether the over-income household occupies a fixed or floating HOME-assisted unit (see below). Over-income households may never be evicted or otherwise have their tenancy terminated solely because their income increased.

**\*Note: In a unit that is both HOME-assisted and part of the Section 42 Rental Housing Tax Credit program, the tax credit over-income rule (known as the 140% Rule) overrides these over-income rules. In Section 42 properties with HOME, the HOME over-income rule is never applied. Instead, rent remains restricted at the lesser of the applicable tax credit or HOME rent limit.**

- **Over-income households in Fixed Units (Over 80% AMI)**

When management conducts an annual income recertification and determines that a household occupying a fixed HOME-assisted unit exceeds 80% of AMI, the unit is considered to be temporarily out of compliance. When the household is determined to exceed 80% of AMI, the rent must be raised as soon as the lease permits (at a minimum, the owner must provide at least 30 days written notice before implementing any increase in rent). Instead of following the applicable HOME rent limit, the household must be charged 30% of adjusted income in rent. However, if the unit is also

part of the Section 42 Rental Housing Tax Credit program, the tax credit rent rules must be followed and this rule does not apply.

The unit is considered back in compliance when one of the following scenarios is met:

1. The over-income household vacates and a new qualified household moves into the unit. Remember that the over-income household cannot be evicted or otherwise terminated because of the increase in income; or
2. The over-income household recertifies and no longer exceeds 80% of AMI, either due to an increase in the income limit and/or a decrease in household income.

*Example:*

*A household moved into a 40% HOME unit with a qualified income. Annual income recertification shows household is now at 93% of AMI. Since total household income exceeds 80% of AMI, the household is considered over-income and the unit is temporarily noncompliant. When the lease permits, management must increase the household's rent to 30% of adjusted income. When the household vacates, the unit must be once again rented to a household that qualifies at or below 40% AMI and the applicable 40% HOME rent limits would once again apply to the unit.*

- **Over-income households in Floating Units (Over 80% AMI)**

When management conducts an annual income recertification and determines that a household occupying a floating HOME- assisted unit exceeds 80% of AMI, the unit is considered to be temporarily out of compliance. When the household is determined to exceed 80% of AMI, the rent must be raised as soon as the lease permits (at a minimum, the owner must provide at least 30 days written notice before implementing any increase in rent). Instead of following the applicable HOME rent limit, the household will be charged 30% of adjusted income in rent (not to exceed the rent on a comparable market unit in the area). However, if the unit is also part of the Section 42 Rental Housing Tax Credit program, the tax credit rent rules must be followed and this rule does not apply.

The unit is considered back in compliance when one of the following scenarios is met:

1. The over-income household vacates and a new qualified household moves into the unit. Remember that the over-income household cannot be evicted or otherwise terminated because of the increase in income; or
2. A non-assisted unit (i.e., a market unit or other unit not currently a HOME-assisted unit) becomes vacant and is re-designated as a HOME-assisted unit. In this scenario, the over-income unit is re-designated as a non-assisted unit. Therefore, the units swap status. The substituted unit that becomes an assisted unit must be a "comparable unit," defined as a unit that is equal or greater than the original unit in terms of size, number of bedrooms, and amenities; or
3. The over-income household recertifies and no longer exceeds 80% of AMI, either due to an increase in the income limit and/or a decrease in household income.

*Example: A household moved into a 40% HOME unit with a qualified income. Annual income recertification shows household is now at 93% AMI. Since total household income exceeds 80% of AMI, the household is considered over-income and the unit is temporarily noncompliant. When the lease permits, management must increase the household's rent to 30% of adjusted income (not to exceed the rent on a comparable market unit in the area).*

*To remedy the temporary noncompliance:*

- i. *When the household vacates, the unit must be once again rented to a household that qualifies at or below 40% AMI; or*
- ii. *A vacant, comparable non-HOME-assisted unit is converted to a 40% HOME unit and the temporarily noncompliant unit is converted to a non-assisted unit; or*
- iii. *The over-income household recertifies and no longer exceeds 80% AMI.*

- **Re-designating Low HOME units that exceed 50% AMI**

If a property with HOME units has both High HOME (60% or 80%) and Low HOME (30%, 40%, or 50%) units, the units may have to swap status to keep the proper unit mix. This rule applies regardless of whether the units are fixed or floating.

If a household that is designated as Low HOME (30%, 40%, or 50%) exceeds the Low HOME income limit (i.e., the 50% AMI limit), the unit is temporarily noncompliant even though household income does not exceed 80% AMI. In this scenario, the unit remains temporarily noncompliant until a High HOME unit (unit at 60% or 80% AMI) is vacated. At this point, the units swap status. The vacant High HOME unit becomes a vacant Low HOME unit and must be rented to a household at 30%, 40%, or 50% depending on the set-aside assigned to temporarily noncompliant unit. The temporarily noncompliant unit is re-designated as a High HOME unit at the appropriate set-aside and rent may be increased when the lease permits. NOTE: Until the units swap status, the temporarily noncompliant unit remains rent-restricted at the applicable Low HOME rent restriction.

*Example: The Smith household moves into a 40% HOME unit on 1/1/10. At annual recertification on 1/1/11, the household is determined to exceed the 50% HOME limit, but does not exceed the 80% limit. Because the Smiths occupy a Low HOME unit and now exceed 50% of AMI, the unit is considered temporarily noncompliant. The Smiths are allowed to stay in the unit and remain rent-restricted at the 40% HOME rent limit.*

*The Johnson household vacates their 60% HOME unit on 4/1/11. The unit must be converted to a Low HOME unit at the 40% AMI restriction in order to replace the temporarily noncompliant unit occupied by the Smith household. The Smith household is converted to a High HOME unit at the 60% AMI restriction. The units swap status and the temporary noncompliance is resolved.*

## **Part 3.2 Rent Limits**

All program units must be rent restricted, based on the rent limits published annually by HUD. The applicable rent limits for a development depend upon the low-income set-asides the owner has chosen. The U.S. Department of Housing and Urban Development (HUD) publishes income and rent limits for each county in Indiana on an annual basis. Upon receipt of this information, IHCDCA will post the new income and rent limits on its website. This information is provided by IHCDCA only for the owner's convenience as a courtesy. However, it is the responsibility of the owner, not IHCDCA, to verify its accuracy. \*NOTE: The owner must ensure that the correct set of rent limits is being utilized based on the applicable funding sources. IHCDCA releases separate sets of rent limits for different programs as required by HUD. For example, each year IHCDCA releases separate rent limits charts for the tax credit program, the HOME and CDBG program, and the HTF program. The limits may differ across programs even in the same county for the same year.

When rent limits are released each year, IHCDCA will require each HOME or HTF-assisted property to submit a HOME/HTF Rent Update Form (IHCDCA Compliance Form #46) for approval of any rent changes. Each property must annually submit this information, even if no rent increase is proposed. Per the 2013 HOME Final Rule and the HTF regulations, the participating jurisdiction (i.e., IHCDCA) must annually approve rents to be charged for all HOME or HTF-assisted properties. The Rent Update Form must also be submitted and approved if the owner proposes changes in rent at other times of the year. This rule only applies to HOME or HTF-assisted units.

Owners may not anticipate increases in income and rent limits. Limits remain in effect until new annual limits are officially published each year by HUD. New limits must be implemented by the HUD released implementation date. Income and rent limits are provided online in Appendix B.

### **A. Rent Limit Terminology**

The rent limit is the maximum rent amount published annually by HUD per bedroom size. The published rent limit includes tenant-paid rent plus utility allowance plus tenant-based rental assistance plus any non-optional charges. Therefore, tenants generally cannot actually be charged the rent limit unless all utilities are owner-paid, the tenant does not receive rental assistance, and there are no additional non-optional charges.

The gross rent for a unit is the sum of tenant portion rent + utility allowance + non-optional charges + tenant-based rental assistance. The gross rent may never exceed the rent limit.

The maximum allowable rent is the most the owner is permitted to charge for rent once tenant-paid utilities (except telephone, cable television, and internet) and other non-optional charges are deducted. The maximum allowable rent can never exceed the rent limit. Maximum allowable rent may also be referred to as the "maximum chargeable rent" or the "net rent."

The tenant-paid rent or lease rent is the actual rent charged to the household by the owner, as defined in the lease. The lease rent may never exceed the maximum allowable rent or the applicable published rent limit.

Each project has a gross rent floor, defined as the lowest rent limit that the owner will ever be required to implement for a particular development. The gross rent floor is the rent limit in effect at the time the funds are awarded. If the current applicable limits drop below the gross rent floor, the owner is not required to accept lower rents. For newer developments, the gross rent floor is now clearly defined in the IHCD Award Agreement document. If the Award Agreement for a particular does not define the gross rent floor, IHCD can assist in determining this information.

NOTE: If the unit receives tenant-based rental assistance (e.g., a voucher or certificate from Section 8), the amount of the voucher/certificate must be included in the gross rent calculation. Therefore, the following rules apply:

- Tenant rent + utility allowance + non-optional charges + tenant-based rental assistance amount = gross rent, which cannot exceed the rent limit.
- Rent limit minus utility allowance minus non-optional charges minus tenant-based rental assistance amount = maximum allowable rent.

See Part 3.3 for more information on utility allowances.

## **B. Rent Limits for Special Unit Types**

The program rent limits may not apply in the following situations:

### **1. SRO Units with no food preparation nor sanitary facilities, or only one of the two:**

- If an SRO-unit has neither food preparation nor sanitary facilities, or only one, the rent may not exceed 75% of the Fair Market Rent (FMR) for a zero-bedroom (efficiency) unit.
  - For example, the FMR for a 0-bedroom unit in a given county is \$300. The rent limit for an SRO unit (with neither food preparation or sanitary facilities or only one) in that county would be \$225 ( $\$300 \times 75\% = \$225$ ).
- Low HOME rent limits are not applied to these SRO projects, but for all projects with five (5) or more HOME-assisted units the "Project Rule" still applies for income limits (i.e., at least 20% of the units must be occupied by households at or below 50% AMI).

### **2. SRO Units with both food preparation and sanitary facilities**

- If an SRO-unit has **both** food preparation and sanitary facilities, then the rent limit depends on whether the unit is Low HOME (30%, 40%, or 50% AMI unit) or High HOME (60% or 80% unit), as described below.
- For Low HOME SRO units, the rent limit is set at the lesser of the HOME program zero-bedroom (efficiency) rent limit, 30% of the household's adjusted income, or the FMR for a zero-bedroom unit.
- For High HOME SRO units, the rent limit is set at the lesser of the HOME program zero-bedroom (efficiency) rent limit or the FMR for a zero-bedroom unit.
- For projects with five (5) or more HOME-assisted units the "Project Rule" applies meaning that at least 20% of the units must be occupied by households at or below 50% AMI that are paying now more than the Low HOME rent limit.

### 3. Group Homes

- Defined as housing occupied by two or more persons or families with common space/facilities for group use.
- The unit is considered a single unit with multiple bedrooms and the rent is calculated as a single unit. Rent cannot exceed the Fair Market Rent for that bedroom size. Each bedroom will have a separate lease and will be charged a proportionate share of the total Fair Market Rent. The combined totals for all bedrooms in the unit cannot exceed the Fair Market Rent for a unit of that bedroom size.
- For example, a group home with four bedrooms would use the Fair Market Rent for a four-bedroom unit and each person's rent would be the proportionate share of the total unit rent. The sum of each occupant's rent cannot exceed the four-bedroom FMR.

### 4. Units with Project-based Rental Assistance

- The owner may charge the project-based rental assistance program rents when:
  - The unit is designated as a Low HOME unit (50% AMI or below); AND
  - The unit receives project-based rental assistance; AND
  - Unit is occupied a very low-income household (household income at 50% AMI or below); AND
  - Household does not pay more than 30% of its adjusted income for rent.

For example:

- Section 8 maximum rent for a unit is \$1200
- Applicable Low HOME Rent Limit for a unit is \$750
- Utility Allowance is \$100
- Tenant Adjusted Income is \$18,000

Rent=  $\$18,000 / 12 \times 30\% = \$450$

Tenant rent payment =  $\$450 - \$100$  (utility allowance) =  $\$350$

PHA rent payment to the owner =  $\$1200 - \$350 = \$850$

HOME allows the owner to use the maximum project-based rent limit in this situation instead of the Low HOME rent limit ( $\$1200$  instead of  $\$750$ )

- The owner must use the HOME program rents if project-based rental assistance is for a unit designated as a High HOME unit or for a household that is above 50% AMI.

### C. Calculating Rent

- Determine the AMI% level (set-aside) the household fits into based on the development's application.
- Determine the utility allowance for the unit based on bedroom size.
- Determine the amount, if any, that the household will be receiving in tenant-based rental assistance.
- Determine if the development receives federal or state project-based rental assistance.
- Determine the total maximum allowable rent. Maximum allowable rent equals the applicable HOME rent limit (based on the AMI level) minus the utility allowance, rental assistance portion, and any non-optional fees

#### Example 1:

Household Size: 3 persons

Annual Income: \$26,350

AMI: 56%

Maximum 3-bedroom HOME Rent (60% Unit): \$554

Utility Allowance: \$80

Section 8 Assistance (tenant-based): \$50

Maximum Tenant Rent:  $\$424$  ( $\$554 - \$80 - \$50$ )

#### Example 2:

Household Size: 3 persons

Annual Income: \$26,350

AMI: 56%

Maximum 3-bedroom HOME Rent (60% Unit): \$554

Utility Allowance: \$0 (owner pays all utilities)

Section 8 Assistance (tenant-based): \$0

Maximum Tenant Rent: \$554

**Example 3:**

*This example is different in that the development receives federal or state project-based rental assistance and all tenants at or below 50% AMI pay no more than 30% of their adjusted income for rent. Therefore, the maximum rent may be the rent allowable under the project-based subsidy program, per 24 CFR 92.252(b)(2). See 3.2 B 3 above for more information.*

- Household Size: 4 persons
- Annual Income: \$25,000
- AMI: 42%
- Maximum 3-bedroom HOME Rent (50% Unit): \$541
- Maximum rent allowed by rental subsidy program: \$600
- Utility Allowance: \$0 (owner pays all utilities)
- Rental Assistance Portion: \$50
- Tenant Rent Portion allowed under Rental Assistance Program: \$550 (\$600 - \$50)

*The owner can accept \$600 (\$50 rental assistance + \$550 tenant portion) even though this exceeds the maximum applicable HOME rent limit. This is allowed because the unit is designated as a Low HOME unit, the annual household income is below 50% AMI, the unit receives project-based rental assistance, and the household is not paying more than 30% of adjusted monthly income on rent.*

**D. Adjusting Rents due to Tenant Income Increases (\*\*HOME ONLY\*\*)**

**\*NOTE: The following requirements apply only to HOME-assisted units.**

When household income changes, the owner/management may raise rents to the applicable rent limit, but are not obligated to do so until the AMI level of the household exceeds 80%. Once the household income exceeds 80% AMI, the household must be charged 30% of its adjusted income for rent. For floating units, households that exceed 80% of AMI are not required to pay rent that exceeds the market rate for comparable non-assisted units in the neighborhood. Rent can only be increased when allowed by the lease, and at a minimum, the owner must provide at least thirty (30) days written notice before implementing any increase in rent.

The following chart outlines the maximum rents that tenants can be charged for developments that are either funded only with the HOME program or that are funded in conjunction with Section 42 Rental Housing Tax Credits (a.k.a. Low Income Housing Tax Credits). When combining programs, the strictest limits should be applied in order to maintain compliance with both programs. However, when combined, the Section 42 over-income rules override the rules discussed in this chapter.

**Table 1: Rent Limits for HOME**

HOME Designated AMI level	“fixed” unit	“floating” unit
Units designated at 30%	Rent may not exceed 30% Rent Limit	Rent may not exceed 30% Rent Limit
Units designated at 40%	Rent may not exceed 40% Rent Limit	Rent may not exceed 40% Rent Limit
Units designated at 50%	Rent may not exceed 50% Rent Limit	Rent may not exceed 50% Rent Limit
Units designated at 60%	Rent may not exceed 60% Rent Limit	Rent may not exceed 60% Rent Limit
Units designated at 80%	Rent may not exceed 80% Rent Limit	Rent may not exceed 80% Rent Limit
Household exceeds 80% AMI	When lease allows, rent must be adjusted to 30% of adjusted household income. *Does NOT apply if RHTC.	When lease allows, rent must be adjusted to 30% of adjusted household income, not to exceed market rent for a comparable unit in the area. *Does NOT apply if RHTC.

Note: Households must be given at least 30 days notice prior to any increase in rent.

**Table 2: Rent Limits for HOME when Combined with Section 42 Rental Housing Tax Credits**

<b>HOME designated AMI level</b>	<b>Allowable Rent when Combined with Section 42</b>
Units designated at 30%	Lesser of the 30% Rent Limit or the applicable RHTC Rent Limit
Units designated at 40%	Lesser of the 40% Rent Limit or the applicable RHTC Rent Limit
Units designated at 50%	Lesser of the 50% Rent Limit or the applicable RHTC Rent Limit
Units designated at 60%	Lesser of the 60% Rent Limit or the applicable RHTC Rent Limit
Units designated at 80%	Lesser of the 60% Rent Limit or the applicable RHTC Rent Limit
Above 80% Units	If a household's income increases above the 80% income limit and the unit has both HOME and RHTC, the applicable RHTC limit will apply. The household is not considered an over-income unit until the income exceeds 140% of the tax credit Federal Minimum Set-Aside for the development (either exceeds 140% of 50% AMI or 140% of 60% AMI). Follow the tax credit "Next Available Unit Rule," not the HOME over-income rule. However, the unit may still need to be redesignated from low-HOME to high-HOME.

**E. Allowable Fees and Charges**

**1. General Rule**

Customary fees that are normally charged to all tenants, such as damage (security) deposits, pet deposits/fees, credit deposits, application fees, and late payment fees are permissible. However, an applicant or tenant cannot be charged a fee for the work involved in completing the additional forms of documentation required by the program, such as the Tenant Income Certification and income/asset verification documents.

Refundable fees associated with renting units (such as security deposits) and one-time penalty fees (such as late payment fees and fees for prematurely breaking a lease, as long as such fees are clearly defined within the lease) are allowable fees that are not included in the gross rent calculation.

**2. Condition of Occupancy Rule (Optional Vs. Non-optional Fees)**

Any fee that is charged for a service that is a condition of occupancy (i.e., a fee for a service that is non-optional/mandatory) must be included in the gross rent computation when checking rent against the applicable rent limit. This is true even if federal or state law requires that the services be offered to the tenants by the owner.

Assuming they are truly optional, fees may be charged for elected services or additional amenities (such as pet fees, fees for extra storage units, etc.) and these fees would not be included in the gross rent calculation. A service or amenity is considered optional only if (1) a tenant may opt out of the service or amenity without penalty and continue to live at the development and (2) "reasonable alternatives" exist.

Additionally, any services the tenant pays for that are provided by the development (whether optional or non-optional) must be listed in the tenant's lease with the cost of each individual service clearly listed.

Example: Charges for paying with credit/debit card

*Some developments may have a credit/debit card machine onsite to allow tenants to pay rent in this method. The monthly fee incurred from having a machine onsite can be passed onto the tenants if it is an optional fee. The fee would be considered optional if the tenants have alternative methods of paying rent that do not include a fee (e.g., cash, money order, check, etc.). In this scenario, the credit/debit machine would be an optional service offered for the tenants' convenience. The amount of the fee for paying with credit/debit card, as well as a list of all accepted alternative methods of payment, must be disclosed to all tenants. Furthermore, the fee may not exceed the actual cost incurred from the machine. Management must keep documents showing the actual costs of having the machine onsite and the amount of the fee being charged to tenants.*

*If credit/debit card is the only means of paying monthly rent, then the fee is not optional, but rather a condition of occupancy (as paying rent is a condition of occupancy). In this case, the credit/debit card machine fees would have to be included as part of the gross monthly rent calculation.*

*Example: Fees for making online payments*

*Some developments may accept online payment of rent. A convenience fee may be charged to the tenant and this fee would be considered optional if the tenants have alternative methods of paying rent that do not include a fee (e.g., cash, money order, check, etc.). In this scenario, the online payment would be an optional service offered for the tenants' convenience. The amount of the fee for paying online, as well as a list of all accepted alternative methods of payment, must be disclosed to all tenants. Furthermore, the fee may not exceed the actual costs incurred by management for offering online payment. Management must keep documentation showing the actual costs of processing online payments and the amount of the fee being charged to tenants.*

*If online payments are the only means of paying monthly rent, then the fee is not optional, but rather a condition of occupancy (as paying rent is a condition of occupancy). In this case, the fees for online payments would have to be included as part of the gross monthly rent calculation.*

### **3. Application Processing Fees**

Application fees may be charged to cover the actual cost of processing the application and checking criminal history, credit history, landlord references, etc. However, the fee cannot exceed the amount of actual out-of-pocket costs incurred by management. No amount may be charged in excess of the average expected out-of-pocket cost of processing an application.

### **4. Mandatory Renter's Insurance**

If renter's insurance is required as a condition of occupancy, then the amount of renter's insurance must be included in the gross rent calculation. In this scenario, the owner must obtain proof of renter's insurance for the tenant, locate the annual premium, and divide by twelve (12) to obtain a monthly cost of renter's insurance. This monthly cost must be added to the tenant-paid rent portion, tenant-based rental assistance, the utility allowance, and any other non-optional fees when calculating gross rent.

### **5. Prohibited Fees**

The following fees may not be charged, regardless of whether or not they are included in the gross rent calculation:

1. Fees for work involved in completing the Tenant Income Certification and other program specific documentation. The owner cannot charge an applicant or tenant for costs incurred to receive or complete income verification forms. If there is a fee associated with obtaining verification, the owner may choose to pay the fee or may instead use a different source of verification.
2. Fees for preparing a unit for occupancy. The owner is responsible for maintaining all units in a manner suitable for occupancy at all times. If a tenant is to be charged decorating, cleaning, or repair fees, the owner must document the file with photos of the damage to prove that the unit is in condition beyond normal expected wear and tear. Charges cannot exceed the actual amount spent on repair. IHCD will expect to see documentation in the tenant file as to the nature of the damage, including photos and receipts for the repair work.

This requirement is not only a program requirement, but also a requirement under Indiana Code 32-31-7-6 which states that "at the termination of a tenant's occupancy, the tenant shall deliver the rental premises to the landlord in a clean and proper condition, **excepting ordinary wear and tear expected in the normal course of habitation of a dwelling unit.**"

3. The owner may not charge pet deposits or fees for assistance animals (including both service and support animals). See Part 4.2B for additional information.

## F. Section 8 Rental Assistance

For tenants with tenant-based Section 8 Housing Choice Vouchers, a copy of the original Housing Assistance Payment (HAP) Contract and the current HAP Amendment from the public housing authority or a copy of the current HUD Form 50058 must be kept in the household's file in order to verify the Section 8 rental assistance received. For tenants residing in units with Section 8 Project Based Vouchers (PBV), the current HUD Form 50058 showing the amount of rental assistance must be included in the file. For tenants residing in units with Section 8 Project Based Rental Assistance (PBRA), the current HUD Form 50059 showing the amount of rental assistance must be included in the file.

See Part 3.2 C for information on calculating rent limits with tenant-based rental assistance and Part 3.2 B for information on calculating rent limits with project-based rental assistance.

## Part 3.3 Utility Allowances

### A. General Information

The maximum gross rent includes an allowance for tenant-paid utilities. Utilities include heating, air-conditioning, water heating, cooking, other electricity, water, sewer, oil, gas, and trash, where applicable. Utilities do not include telephone, cable television, or internet. \*NOTE: HUD Form HUD-52667 "Allowances for Tenant-Furnished Utilities and Other Services" includes line items for range/microwave and refrigerator. These items only need to be included in the utility allowance calculation if they are not included in the unit (i.e., if the tenant must furnish their own appliances).

If all utilities are included in the household's rent payment, no utility allowance is required. When utilities are paid directly by the tenant (as opposed to being paid by the owner/development), a utility allowance must be used to determine maximum allowable rent. To qualify as part of the utility allowance, the cost of any included utility must be paid directly by the tenants, not by or through the owner of the building. If the owner or a third-party separately bills the tenant for a utility, the payment designated for the utility must be considered rent and may not be included in the utility allowance. The utility allowance (for utility costs paid by the tenant) must be subtracted from the rent limit to determine the maximum allowable tenant-paid rent.

*For example: If the rent limit on a unit is \$350 and the tenant pays utilities with a utility allowance of \$66 per month, the maximum allowable rent chargeable to the tenant is \$284 (\$350 minus \$66).*

### B. Approved Utility Allowance Sources

The following list contains the different sources of utility allowances allowable for program units:

1. **Rural Development (RD) Assisted Buildings:** Buildings assisted by RD or with RD-assisted tenants must use the applicable USDA Rural Development approved utility allowances. If a building is both RD-assisted and HUD-regulated, use the RD approved utility allowance.
2. **HUD-Regulated Buildings (e.g., Section 8 Project-Based Rental Assistance):** Must use the applicable HUD approved utility allowance that is specific to the building. However, if the building is also RD-assisted, use the RD approved utility allowance instead. A building is considered HUD-regulated if HUD reviews the rents and utility allowances for the building on an annual basis.
3. **Buildings that are not RD-Assisted or HUD-Regulated:** Buildings that are not RD-assisted or HUD-regulated may use any of the following utility allowance options:

- Use the applicable local PHA utility allowance. \*CAUTION: The PHA chart cannot be used for HOME compliance for projects that received a commitment of HOME funds after 8/23/13. These projects must use a project-specific utility allowance;
- Use the county-specific PHA utility allowance schedule from [IHCDA's utility allowance webpage](#). \*CAUTION: The IHCDA county charts cannot be used for HOME compliance for projects that received a commitment of HOME funds after 8/23/13. These projects must use a project-specific utility allowance;
- Options 4, 5, or 6 as described below. \*NOTE: These options are all project-specific utility allowances and are eligible for use by HOME projects that received a commitment of HOME funds after 8/23/13.

4. **Energy Consumption Model:** Upon request, IHCDA will approve a utility allowance estimate for a development based on actual tenant consumption (utility usage) data. Requests for an Energy Consumption Model Estimate must be made by submitting the letter entitled "Approval Request Letter- Energy Consumption Model" (available in Appendix C) to [ua@ihcdain.gov](mailto:ua@ihcdain.gov). Along with the request letter, the owner must complete and submit the "IHCDA Tenant Usage Data Form" (available in Appendix C). This usage data form must include information for 30% (rounded up) of the units of each unit type (flat or townhome) for each bedroom size. (Note: There are two separate usage data forms for flats and townhomes). The usage data must contain a full 12 months of consumption. The usage data forms may be completed by the owner, management agent, or an approved qualified engineering/professional firm on behalf of the owner (see Option #7 below for more information on using approved engineers).

To be included in the estimate, a unit must have at least 44 weeks of continuous consumption data (i.e., the unit cannot have been vacant for more than 8 weeks of the year). The consumption data can be no more than 60 days old. Additionally, the owner must submit verification of the tax rate for the county in which the development is located.

*Example: A development has 48 units with 20 one-bedroom units and 28 two-bedroom units. The sample must include 30% of the one-bedroom units (6 units) and 30% of the two-bedroom units (9 units rounded up from 8.4).*

For new construction developments or renovated buildings with less than 12 months of consumption data available, IHCDA will allow consumption data for the 12-month period of units of similar size and construction in the geographic area in which the new development is located. The existing development that will be used for the comparison must be in the State of Indiana and must be in the same climate zone as the development for which the estimate is being completed. Please reference the Climate Zone Map in Appendix C. Once the project achieves 90% occupancy for 90 consecutive days, the owner is required to resubmit usage data to IHCDA using the actual units in the development.

When IHCDA approves the estimate, the owner will receive an IHCDA Utility Allowance Approval letter.

5. **HUD Utility Schedule Model:** The owner may calculate utility allowances using the HUD Utility Schedule Model found at <http://www.huduser.org/resources/utlmodel.html>. Requests for approval of a HUD Utility Schedule Model must be made by submitting the letter entitled "Approval Request Letter- HUD Utility Schedule Model" (available in Appendix C) to [ua@ihcda.in.gov](mailto:ua@ihcda.in.gov). Along with the request letter, the owner must also submit the model and the supporting documentation used in the model.

When IHCDA approves the estimate, the owner will receive an IHCDA Utility Allowance Approval letter.

6. **IHCDA/Qualified Engineer Estimate:** The owner may use an independent licensed engineer or qualified professional approved by IHCDA to calculate a utility estimate model. A list of approved engineers/professionals is maintained in Appendix C. The qualified professional must (1) be approved by IHCDA and (2) not be related to the development owner as defined in Internal Revenue Code Section 267(b) or 707(b). To become IHCDA approved, the engineer/ qualified professional must submit the "Application for Approved Utility Allowance Provider" (available in Appendix C).

The estimate must consider local utility rates, property type, climate and degree-day variables by region in the state, taxes and fees on utility charges, building materials, and mechanical systems. Considerations under "property type" should

include the types of appliances, building location, building orientation, and unit size. Alternatively, the qualified engineer may create an allowance using actual consumption data as described in Option #4 above.

When IHCDa approves the estimate, the owner will receive an IHCDa Utility Allowance Approval letter.

### C. Updating Utility Allowances

The owner must use the most current applicable utility allowance and update utility allowances at least annually. Owners may combine utility allowances from different sources. When using multiple utility allowance sources for different utilities, the owner must clearly document which source is being used for each utility type. Furthermore, the owner may elect to change the utility allowance type from year to year.

To remain in compliance, owners must utilize the correct and most current utility allowance in order to properly determine rents. An increase in the utility allowance will increase the gross rent and may cause the rent to be greater than the maximum allowable rent, in which case the tenant-paid rent portion must be lowered. When a utility allowance change causes gross rent to exceed the allowable rent limit, rents must be refigured within 90 days of the effective date of the change to avoid violating the rent limit. The owner cannot wait until the next recertification to adjust rent.

Utility allowances must be reviewed and updated as follows:

- If there is a change in who pays the utilities;
- Within 90 days of an allowance update by IHCDa, HUD, Rural Development, or the local PHA;
- At least once per calendar year for developments or buildings using an IHCDa/Qualified Engineer Estimate, HUD Utility Schedule Model, or Energy Consumption Model. These utility allowance types must be submitted to IHCDa for approval prior to implementation.

## Section 4: Compliance Regulations

The following section highlights some of the statutory and regulatory provisions directly affecting compliance. However, this is not meant as an exhaustive listing of compliance regulations (see the Preface and Disclaimer on Page 1).

### Part 4.1 Rules Governing the Eligibility of Particular Tenants and Uses

#### A. Vacant Units

Vacant units formerly occupied by qualified low-income households may continue to be treated as occupied by a qualified low-income household for purposes of the set-aside requirements, provided that reasonable attempts were or are being made to rent the unit. Management must document that reasonable attempts are being made to rent vacant units to qualified households.

Units cannot be left permanently vacant and still satisfy the requirements of the program. Additionally, vacant units must remain suitable for occupancy and cannot be cannibalized for parts. IHCD reserves the right to question vacancies that are noted during physical inspection, file monitoring, or Annual Owner Certification review, especially when there is a high quantity of vacancies or when units have been vacant for longer than 90 days. The owner or manager must be able to document attempts to rent the vacant units to eligible tenants.

#### B. Household Composition

When determining household size for purposes of implementing the correct income limits, do not include live-in aides and guests (See Part 4.1 C for information on unborn children and Part 4.1 D for information on live-in aides).

A household has the right to decide whether or not to include individuals permanently confined to a hospital or nursing home as a household member. If the individual is included as a household member, their income must be certified and included.

Military members away on active duty are only counted as household members if they are the head, spouse, or co-head or if they leave behind a spouse or dependent child in the unit.

All other individuals, including temporarily absent family members (e.g., dependents away at school, etc.) foster children and adults, unborn children, and children in joint custody agreements that are in the unit at least 50% of the time, must be included in household size for purposes of determining the applicable income limit.

Household composition may change after the initial tenant(s) moves into a unit. However, at the time of application an applicant should be asked if there are any expected changes in household composition during the next 12 months. If so, the composition change and any subsequent changes in estimated income should be reflected on the initial Tenant Income Certification.

#### C. Unborn Children and Child Custody

An owner must count an unborn child (or children) when determining household size and applicable income limits. The owner must obtain a self-certification from the household certifying the pregnancy and such statements must be placed in the tenant file. If the unborn child has been self-certified by the household, then it must be included in household size. Per the HUD Handbook 4350.3 Appendix 3, the owner “may not verify further than self-certification.”

Additionally, when determining household size, owners should include children subject to a joint custody agreement, if such children live in the unit at least 50% of the time. However, a child may not be counted in more than one program unit for household size.

## **D. Live-in Care Attendants (Live-in Aides)**

A live-in care attendant (a.k.a. a live-in aide) is a person who resides with one or more elderly or near-elderly persons or disabled persons. To qualify as a live-in care attendant, the individual (a) must be determined to be essential to the care and well-being of the tenant, (b) must not be financially obligated to support the tenant, and (c) must certify that he/she would not be living in the unit except to provide the necessary supportive services. Family members, including spouses, may qualify as live-in aides if they meet these criteria. Additionally, the live-in aide cannot move a spouse, child, or other member into the unit, as doing so would indicate that the aide is living in the unit for reasons other than the care of the tenant.

A live-in care attendant is not counted as a household member for purposes of determining the applicable income limits, the income of the attendant is not counted as part of the total household income, and they do not need to be listed on the TIC. The need for a live-in care attendant must be certified with documentation from a medical professional (e.g., a letter from the tenant's doctor) and included in the tenant file. The owner may verify whether the live-in care attendant is necessary only to the extent to document that the applicant/tenant has a need for the requested accommodation. The owner may not require applicants/tenants to provide access to confidential medical records, to submit to physical examination, or to disclose specific information about the nature of their disability.

If the qualified tenant vacates the unit, the attendant must vacate as well. If an attendant would like to be certified as a qualified tenant and remain in the unit, normal certification procedures must be performed, and the individual must meet the applicable eligibility requirements of the program.

While the live-in care attendant is not considered a household member, they are still subject to criminal background checks (as per the tenant selection criteria effective at the property) and must comply with tenant house rules. An owner may deny a live-in care attendant that does not pass criminal background checks or evict an attendant who exhibits behavior that is disruptive, illegal, or endangering to other tenants, as defined in the tenant selection criteria and lease.

Sample forms to verify and document a live-in care attendant are available in on [IHCD's compliance webpage](#) (Forms 11 and 12).

## **E. Foster Children/Adults**

Per HUD Handbook 4350.3, foster children and adults are now considered household members for purposes of determining income limits.

The earned and unearned income received by foster adults, and the unearned income received by foster children, must be included in the calculation of total household income. Thus, foster adults and children are treated in the same manner as other household adults and children. However, the full amount of income a household receives for the care of foster children and adults is excluded from the calculation of total household income.

## **F. Special Needs Populations**

The owner may have committed to set aside a percentage of total development units to qualified tenants who meet the State's definition of "special needs population" (as provided in IC 5-20-1-4.5). Special needs populations include:

- Persons with physical or developmental disabilities
- Persons with mental impairments
- Single parent households
- Survivors of domestic violence
- Abused children
- Persons with chemical addictions

- Persons experiencing homelessness
- The elderly

Required Documentation:

1. The owner and a qualified organization that provides and has the capacity to carry out services for the special needs population must enter into an agreement (signed by all parties) acceptable to the Authority in its sole discretion whereby the owner agrees to: (a) set aside a number of units for the special needs population and (b) notify the qualified organization when vacancies of the set-aside units occur at the development. The qualified organization must agree to: (a) refer qualified households to the development and (b) notify households of the vacancies of the set-aside units at the development. This is called the “referral agreement.”

The owner may enter into multiple referral agreements throughout the Affordability Period. Furthermore, referral agreements may expire or terminate, as long as at least one active referral agreement with a qualified service provider is in place at all times. IHCD encourages developments to annually evaluate the affordability and demographic demands of the special needs population in their market area in order to identify potential qualified entities that may provide additional referrals. IHCD will request to see a copy of current referral agreements when conducting file audits.

2. The resume of the organization providing services for the special needs population (resume must demonstrate ability to provide services).
3. The files of those tenants who qualify as a special needs population must include documentation to show that the unit is meeting the special needs set-aside. For those tenants referred to the development by the qualified service organization, a copy of the referral should be placed in the file. For special needs tenants who were not referred to the development by the qualified organization, the tenant should self-certify that they meet the definition of special needs population. However, for persons with disabilities management may not inquire into the specific nature of the special need (for example, management cannot ask the tenant details about their disability- see Part 5.3B for more guidance).
4. When reporting tenant events through the Indiana Housing Online Management website, the owner/management must designate which units meet the special needs population set-aside.
5. For information on marketing accessible units or units designated for special needs populations, see Part 4.2F.

## G. HOME Student Rule

The 2013 HOME Final Rule updated the definition of housing to exclude dormitories and all types of student housing, not just student dormitories. The 2015 HUD Applicability Chart clarified that this rule applies retroactively to all HOME-assisted properties not just those funded after implementation of the Final Rule. Therefore, all HOME-assisted units must now adopt the Section 8 program restrictions on student participation found at 24 CFR 5.612.

These restrictions do NOT apply to CDBG, CDBG-D, HTF, or NSP assisted units.

If a household contains an adult student enrolled in an institute of higher learning who is under age twenty-four (i.e., age 18-23), then the household must meet an exemption to qualify for HOME assistance. **This is true whether the student is full or part-time.**

If the student meets one of the following criteria, then the household is eligible:

1. Student is a dependent of the household;
2. Student is a veteran of the United States Military;
3. Student is married;
4. Student is a parent with dependent child(ren);
5. Student a person with a disability that was receiving Section 8 assistance prior to 11/30/05;
6. Student can prove independence from his or her parents based on the following:

- A. Of legal contract age under state law; AND
  - B. Has established a separate residence from parents (not counting a dormitory or student housing) for at least one year, or meets the US Department of Education definition of independent which includes an individual who was an orphan or ward of the state through age eighteen (18), is living with a legal dependent, or is a graduate or professional student; AND
  - C. Is not claimed on parents' tax returns; AND
  - D. Parents must certify whether or not they provide financial assistance (this does not affect student eligibility but could affect income eligibility).
7. If none of the above applies, the household can qualify if the student's parents are income-eligible under the HOME income limits for the county in which they live.
- A. If the parents are divorced or separated, get a declaration from both parents.
  - B. If the parents refuse to provide declaration of income and/or statement of whether or not they provide financial assistance, then the household is not eligible.

Households that do not meet this requirement are not eligible to move into a HOME-assisted unit. If a household that is already occupying a HOME-assisted unit later becomes student ineligible, then that household is treated as an over-income household as described in Part 3.2D of this manual.

At initial certification and annual recertification, each adult household member must complete a Student Status Self-Certification for HOME (IHCD Compliance Form #36) to certify student status. If the household invokes the student rule and claims to meet an exception, management must obtain proof that the household qualifies and document the file.

#### **H. Conflict of Interest: Occupancy of Assisted Units**

Per the conflict of interest provisions of 24 CFR 92.356(f), the following persons may not live in assisted units for the duration of the project's affordability period:

- An owner, developer, or sponsor of a project; or
- An officer, employee, agent, elected or appointed official, or consultant of the owner, developer, or sponsor; or
- The immediate family members of an owner, developer or sponsor; or
- The immediate family members of an officer, employee, agent, elected or appointed official or consultant of an owner, developer, or sponsor

### **Part 4.2 Nondiscrimination**

#### **A. Fair Housing and Equal Access: Protected Classes and Affirmative Marketing Requirements**

##### **1. Protected Classes and Prohibited Activities under Fair Housing and HUD's Equal Access Rule**

The owner or agents of the owner shall not discriminate in the provision of housing on the basis of race, color, sex, national origin, religion, familial status, or disability (the seven protected classes under the Fair Housing Act) or ancestry (an additional protected class under the Indiana Fair Housing Act). Nondiscrimination means that owners cannot refuse to rent a unit, provide different selection criteria, fail to allow reasonable accommodations or modifications, evict, or otherwise treat a tenant or applicant in a discriminatory way based solely on that person's inclusion in a protected class. Owners may not engage in steering, segregation, false denial of availability, denial of access to services or amenities, discriminatory advertising, or retaliation against individuals that make fair housing complaints.

Effective March 5, 2012, all HUD funded properties (including HOME/CDBG/CDBG-D/NSP funding) are subject to the rule entitled "Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity." According to this rule, HUD-assisted properties must make housing available without regard to actual or perceived sexual orientation, gender identity, or marital status. Additionally, HUD-assisted housing providers are prohibited from inquiring about the sexual orientation or gender identity of applicants and occupants for the purpose of determining eligibility for housing. For purposes of this rule, the term "gender identity" means actual or perceived gender-related characteristics and the term "sexual orientation" means homosexuality, heterosexuality, or bisexuality.

The 2021 HUD memo “Implementation of Executive Order 13988 on Enforcement of the Fair Housing Act” states that HUD will enforce the Fair Housing Act to “prohibit discrimination because of sexual orientation and gender identity.” Specifically, the notice notes that HUD shall consider “the Fair Housing Act’s prohibition on sex discrimination to include discrimination because of sexual orientation or gender identity.”

## **2. Required Actions- General**

All owners, managers, and staff members should be familiar with both state and federal civil rights and fair housing laws. IHCD strongly encourages owners and management companies to provide Fair Housing and Equal Opportunity training for all staff, including maintenance staff, associated with any property. Staff should attend a Fair Housing and Equal Opportunity training at least once every calendar year.

All tenant selection plans must acknowledge that the property follows the Fair Housing Act’s nondiscrimination requirements, as well as the requirements of VAWA (if applicable). In addition, tenant signed forms must include the Fair Housing and Equal Opportunity logo.

IHCD has established procedures for processing Fair Housing complaints made to IHCD. The procedures are as follows: 1) IHCD will forward all Fair Housing complaints to the Fair Housing and Equal Opportunity Office at HUD and also to the Indiana Civil Rights Commission for investigation and 2) IHCD will notify the owner and management company of such complaint. Noncompliance may result in penalties, including recapture of funds and/or suspension or debarment.

## **3. Required Actions- Affirmative Fair Housing Marketing Plan & Fair Housing Brochure**

All projects with five or more program-assisted units must create and implement an Affirmative Fair Housing Marketing Plan (AFHMP) using HUD Form 935.2A. In addition, Affirmative Fair Housing Marketing Plans must be evaluated at least once every five years and updated according to the policies of the Fair Housing and Equal Opportunity Office of the Department of Housing and Urban Development (HUD). All updated Affirmative Fair Housing Marketing Plans must also be submitted to IHCD. See Part 2.2 L for more information.

Upon project entry, households living in program units must be given the Fair Housing brochure entitled “Are You a Victim of Housing Discrimination.” The household must sign documentation acknowledging the receipt of this brochure at time of move-in, and this receipt must be maintained in the household’s file. Additionally, all owners are required to post the Fair Housing and Equal Opportunity poster onsite in the leasing office and/or other common area.

## **B. Fair Housing: Reasonable Accommodations and Modifications**

The Fair Housing Act requires owners to make reasonable accommodations and modifications when necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling. For purposes of the Fair Housing Act, disability is defined as a person who has/is:

- A physical or mental impairment which substantially limits one or more of such person’s major life activities; or
- A record of having such an impairment; or
- Regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act).

The owner may verify the disability only to the extent necessary to document that the applicant/tenant has a need for the requested accommodation. The owner may not require applicants/tenants to provide access to confidential medical records or to submit to physical examination. The owner may not specifically ask about or verify the nature and extent of the disability. The verification form used must be signed by the applicant/tenant to authorize release of such information and should request that the source identify (1) whether the applicant meets the definition of disabled as provided above and (2) whether the requested

accommodation or modification relates to the person's specific needs. Receipt of Social Security disability payments is adequate verification of an individual's disability status, but the correlation between the disability and the requested accommodation or modification may still need verified.

### **1. Reasonable Accommodations and Service Animals**

A reasonable accommodation is a change, exception, or adjustment in rules, policies, practices, or services when such a change is necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling, including public and common spaces. Per the Fair Housing Act, an owner must allow a reasonable accommodation unless doing so will be an undue financial burden or fundamentally alter the nature of the provider's operations. When a reasonable accommodation will result in an undue financial burden, the owner must provide all other accommodations up to the point at which further accommodations will result in the undue financial burden. For more information on reasonable accommodation, refer to the HUD and Department of Justice (DOJ) Joint Statement "Reasonable Accommodations Under the Fair Housing Act" released May 17, 2004 (available in Appendix F).

A common type of reasonable accommodation involves assistance animals. IHEDA uses the term assistance animals in this manual to broadly describe a category that includes service animals and support animals. These types of animals are not pets and therefore must be permitted even in "no-pet" housing, assuming that the individual has requested an accommodation to the "no-pet" rule and that the need for the service animal can be verified. In addition, the owner cannot charge an upfront security deposit or a fee (one-time or recurring) for the service animal. However, the owner can charge the tenant the cost of repairing any damage caused by the service animal.

FHEO Notice 2020-01 provides several important clarifications on assistance animals:

- A resident may request a reasonable accommodation at any time, including before or after acquiring the assistance animal.
- Since pet rules do not apply to assistance animals, owners cannot limit the breed or size of an assistance dog. An accommodation could potentially be denied or revoked based on a specific animal's specific behaviors, a direct threat, or a resident's inability to maintain or control an animal.
- "Animals commonly kept in households" can be considered support animals. This includes dogs, cats, small birds, rabbits, hamsters, gerbils, other rodents, fish, turtles, or other small, domesticated animals "traditionally kept in the home for pleasure rather than commercial purposes." Uncommon/unique animals include reptiles (besides turtles), barnyard animals, monkeys, kangaroos, or other non-domesticated animals.
- Uncommon animals could still potentially qualify as an assistance animal, but there is a substantial burden on the person making the accommodation request to prove "a disability-related need for the specific animal or the specific type of animal." Consideration may be given to if the animal can be kept outdoors in a fenced area and appropriately maintained, if applicable.
  - Example 1- if the animal is trained to do something an assistance dog cannot do
  - Example 2- if a healthcare provider confirms a need for that type of animal, perhaps because the resident is allergic to common animals such as dogs and cats

Another common example of reasonable accommodation is a live-in care attendant / live-in aide. For more information on this topic, see Part 4.1D.

### **2. Reasonable Modifications**

A reasonable modification is a change to the physical structure of the premises when such a change is necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling, including public and common spaces. Per the Fair Housing Act, an owner must allow a reasonable modification at the expense of the tenant. However, if the changes needed by the tenant are ones that should have already been included in the unit or common space in order to comply with design and construction accessibility standards, then the owner will be responsible for paying for the modifications. For more information on reasonable modification, refer to the HUD and Department of Justice (DOJ) Joint Statement "Reasonable Modifications Under the Fair Housing Act" released March 5, 2008 (available in Appendix F).

While the Fair Housing Act allows the owner to pass on costs of reasonable modifications to the tenants, Section 504 of the Rehabilitation Act of 1973 (which applies to housing that receives federal financial assistance) requires the housing provider to pay for reasonable modifications unless providing them would be an undue financial and administrative burden or result in a fundamental alteration of the program. **Therefore, the costs of reasonable modifications for HOME, HTF, CDBG, CDBG-D, or NSP assisted units are covered by the owner / housing provider.**

### **3. Internal Procedures and Documentation**

IHCDA strongly advises all owners to have a written policy describing how they will handle requests for reasonable accommodations and modifications. The main steps are outlined below. In this context, “owner agent” means the person receiving the request for a reasonable accommodation or modification, most likely the onsite management agent.

- i. Resident or a family member or someone else acting on the resident’s behalf makes a request for an accommodation or modification. A request can be made either orally or in writing. If this request is made orally, the owner agent should document the nature of the request and the date and time received.
- ii. Owner agent verifies the need only if (1) the disability is not obvious, (2) if unsure if the disability is permanent or temporary, and/or (3) if unsure how the request relates to the need (i.e., does not understand correlation between the person’s needs and the request made). The form used to request verification cannot ask specific information about the nature of a person’s disability. The purpose of verification is to verify that the person meets the Fair Housing Act definition of disability and that the requested accommodation or modification is necessary for that person’s equal opportunity to enjoy and use the housing.
- iii. If verification supports the need, then the owner agent must take the necessary steps to provide the accommodation or modification. An undue delay is noncompliance and is treated in the same manner as a denial.
- iv. If verification does not support the need, then the owner agent should schedule an interactive meeting with the resident to request clarifications and attempt to achieve a mutually acceptable resolution of the issue. The owner agent should carefully explain the concerns or questions related to the request and, if applicable, why the request is being denied
- v. Document the tenant file with all related information.

### **C. General Public Use**

Program units must be available for use by the general public. Owners are allowed to establish preferences for certain population groups (e.g., persons experiencing homelessness, persons with disabilities, older person, etc.). These preferences, however, must not violate Fair Housing or any other anti-discrimination policies, must be documented in the tenant selection criteria, and must be approved by IHCDA.

If a residential rental unit is provided only for a member of a social organization or provided by an employer for its employees, the unit is not for use by the general public and is not eligible for funding.

Furthermore, owners cannot refuse to accept a prospective tenant based solely on the fact that he or she holds a Section 8 Housing Choice Voucher or receives similar rental assistance.

### **D. General Occupancy Guidelines/ Household Size**

IHCDA does not impose any requirements governing minimum or maximum household size for a particular unit. However, owners must comply with all applicable local laws, regulations, and/or financing requirements (e.g., if Rural Development, use RD regulations). IHCDA advises all owners and their agents to be consistent when accepting or rejecting applications. Occupancy guidelines or requirements must be incorporated into the development’s written tenant selection plan and management plan. Management should be aware of occupancy standards set by federal, state, HUD, PHA, civil rights laws, tenant/landlord laws, and municipal code that may establish a maximum or minimum number of persons per unit.

For guidance on determining household size, see Part 4.1 B.

## E. Tenant Selection Plans

All developments must have a written Tenant Selection Plan that describes the applicable program eligibility requirements and the screening policies implemented by management. IHCDCA will review the Tenant Selection Plan as part of its monitoring efforts.

There are no federal or state requirements regarding criminal or credit background checks, landlord references, or a minimum income necessary for occupancy. Implementation of these selection criteria is up to owner/management discretion, as long as the screening criteria are applied equally to all applicants and do not violate any Fair Housing or related regulations. Screening criteria must also comply with requirements of any other funding sources.

Owners implementing criminal background checks must ensure that they do not violate Fair Housing. Tenant selection plans and screening criteria must be established in compliance with HUD's "Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate Related Transaction" notice issued on April 4, 2016 (included in Appendix F). Per that notice, arrest records are not sufficient basis for denying an application. Conviction records may be used for tenant screening, but "a blanket prohibition on any person with any conviction record- no matter when the conviction occurred, what the underlying conduct entailed, or what the convicted person has done since then" is not permissible. Tenant selection policies must "accurately distinguish between criminal conduct that indicates a demonstrable risk to resident safety and/or property and criminal conduct that does not" and must "take into account the nature and severity of an individual's conviction."

Additionally, there are no regulations governing citizenship requirements for units assisted by the programs covered in this manual. Since the Fair Housing Act does not prohibit discrimination based solely on citizenship status, owners may ask applicants to provide documentation of citizenship or immigration status as part of the screening process. If the owner chooses to implement such a policy, the screening criteria must be established in writing and applied in a uniform, nondiscriminatory fashion with caution to avoid any discriminatory impact based on Fair Housing protected classes- particularly race, color, or national origin. Owners should be aware that other housing programs (such as Section 8, other HUD programs, or RD programs) may have stricter citizenship requirements that must be followed if the project has additional funding sources.

Because many of these tenant selection criteria are left up to the discretion of the owner, it is required that each development implements a written Tenant Selection Plan. This document must be made available to all applicants and tenants and will be reviewed by IHCDCA during compliance monitoring.

At a minimum, a Tenant Selection Plan must include the following:

- Occupancy standards in effect (how many tenants can live in a unit based on size of the unit);
- Program eligibility factors, including income limits and student status eligibility for HOME-assisted units;
- Any minimum income requirements imposed by management, if applicable. Minimum income requirements may not be applied to applicants with tenant-based rental assistance or for units with project-based rental assistance;
- Any citizenship requirements imposed by management or required by another funding source, if applicable;
- Specifics on the information that is analyzed when performing credit checks, criminal background checks, and previous landlord references. Management should clearly spell out what findings constitute a rejection of application (e.g. do certain criminal charges or a certain credit score automatically disqualify the household?). Criminal background check policy must be compliant with the 2016 HUD Office of General Counsel guidance and described above;
- Explanation of the application and waiting list process, including a process through which an applicant is notified in writing of rejection and can then choose to appeal the rejection decision;
- Explanation of the transfer policies in effect;

- Breakdown of any special preferences set aside at the project (e.g., units reserved for special needs populations or a Housing for Older Persons age restriction on the project); and
- List of any other relevant items used in considering the household’s eligibility for occupancy

When creating a development’s Tenant Selection Plan, the owner must be careful to follow all applicable eligibility regulations, nondiscrimination requirements including Fair Housing, the Violence Against Women Reauthorization Act (VAWA), the Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity Rule, HUD guidance on criminal background checks, and applicable local occupancy standards.

With the exception of accessible or special needs units (see Part F below), all units should be leased on a first-come first-served basis with tenants selected in chronological order from the waiting list.

NOTE: Units designated as permanent supportive housing for persons experiencing homelessness are subject to special tenant selection requirements. See Part 4.6 for additional information.

## **F. Marketing Accessible Units**

At initial lease-up, accessible units should be marketed to persons with disabilities requiring an accessible unit. For ongoing leasing, the following order must be followed for marketing the accessible units:

1. First offer accessible units to existing residents that require the accessibility features but are currently occupying a unit that does not offer such features.
2. Next offer accessible units to qualified applicants on the waiting list that require the accessible unit.
3. Market the unit to attract new qualified applicants that require an accessible unit
4. Finally, offer the unit to a non-disabled household on the waiting list (a household that does not need the accessible features of the unit). If this is done, the household must be informed that it may later be asked to transfer to a comparable, but non-accessible, unit if the accessible unit is needed by a person with a disability. While the household may have to transfer if a comparable, vacant non-accessible unit is available, it would not be evicted or otherwise have its tenancy terminated in order make room for a household in need of the accessible features. This agreement must be incorporated into the lease or a lease addendum.

## **G. Violence Against Women Reauthorization Act of 2013 and 2022 (VAWA)**

### **1. Applicability / “Covered Programs”**

The 2013 and 2022 reauthorizations of the Violence Against Women Act (VAWA) expanded the Act’s original coverage to include projects funded through many, but not all, HUD programs. Those programs are referred to as “covered programs.” HUD then issued a final rule effective December 16, 2016 in 24 CFR Part 5 Subpart L “Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking” to identify requirements specific to HUD-funded properties and to provide a list of all covered programs. The final rule and subsequent program-specific HUD regulations expanded VAWA protections to the HOME and HTF programs as outlined below. CDBG, CDBG-D and NSP are not covered by VAWA.

- HUD implemented specific VAWA regulations for the HOME program in 24 CFR 92.359. Per that regulation, VAWA requirements only apply to HOME projects “for which the date of the HOME funding commitment is on or after December 16, 2016.”
- HUD implemented specific VAWA regulations for the HTF program in 24 CFR 93.356. Per that regulation, VAWA requirements apply to all rental housing assisted with HTF.

Note: VAWA is also applicable to the low-income housing tax credit (LIHTC) program. If a project has LIHTC, the owner must follow VAWA requirements.

## **2. Prohibited Denial/Termination**

No applicant for or tenant of covered housing programs may be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.

VAWA protections apply to all victims of domestic violence, dating violence, sexual assault and stalking regardless of sex, gender identity, or sexual orientation.

## **3. Lease Terms**

The owner/manager shall ensure that an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as:

- A serious or repeated violation of a lease by the victim or threatened victim of such incident; or
- Good cause for terminating the assistance, tenancy or occupancy rights to housing of the victim of such incident.

## **4. Termination on the Basis of Criminal Activity & Bifurcation of Lease**

No person may deny assistance, tenancy, or occupancy rights to an applicant or tenant solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking that is engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant, if the tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking. Notwithstanding the foregoing, the owner and/or manager may bifurcate a lease for the housing in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant of the housing and who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual, without evicting, removing, terminating assistance to, or otherwise penalizing a victim of such criminal activity who is also a tenant or lawful occupant of the housing. The owner and or manager must provide any remaining tenants with an opportunity to establish eligibility and a reasonable time to find new housing or to establish eligibility.

## **5. Confidentiality of Tenant Information Related to Domestic Violence, Dating Violence, Sexual Assault, or Stalking**

The owner shall ensure that any information submitted to the staff, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking shall be maintained in confidence and may not be entered into any shared database or disclosed to any other entity or individual, except to the extent that the disclosure is:

- Requested or consented to by the individual in writing;
- Required for use in an eviction proceeding against any individual who is a tenant or lawful occupant of the housing and who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking; or
- Otherwise required by applicable law.

## **6. Required Notices**

HUD has developed, and may amend from time to time, notices of the rights of individuals under VAWA including the right to confidentiality and the limits thereof. The owner agrees to ensure that these notices are utilized and disseminated at the project as directed by HUD and/or IHCD. See item #7 below for information on required forms.

## **7. Emergency Transfers**

HUD has developed, and may amend from time to time, guidance regarding a model emergency transfer plan that allows tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to transfer to another available and safe dwelling unit. The owner agrees to ensure that any guidance developed will be utilized as directed by HUD and/or IHCD. See item #7 below for information on required transfer plan format.

## **8. Required Forms**

IHCD mandates the use of the following VAWA forms for all projects subject to VAWA compliance, as defined in Part 4.2G(1) above. All forms are available in Appendix H:

- HUD 5380: Notice of Occupancy Rights Under VAWA. Must be provided at the following times, along with a copy of the HUD 5382:
  - At the time of initial admission; and
  - At the time of denial of tenancy; and

- When termination / eviction notices are sent.
- HUD 5381: Model Emergency Transfer Plan. The owner must create a model plan specific to each project. The plan must be made available for review by tenants and by IHCD.
- HUD 5382: Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking. This form is to be used by tenants as a self-certification form. A copy must be attached any time the HUD 5380 is distributed.
- HUD 5383: Emergency Transfer Request. This form is used by tenants to request a transfer under VAWA.
- IHCD VAWA Lease Addendum. EXCEPTION: if the property is HUD-assisted and required to use a HUD-approved lease addendum, use the HUD VAWA Lease Addendum
  - If the project includes Low Income Housing Tax Credits with HOME or HTF, use the HOME/HTF VAWA lease addendum. There is no need to also use the tax credit VAWA lease addendum. Only one VAWA lease addendum is required per household.

**9. Nonretaliation Provisions (Added in VAWA Reauthorization of 2022)**

An owner agent may not discriminate against any person because they have opposed any act or practice made unlawful by VAWA or testified, assisted, or participated in any VAWA-related matter.

**10. Noncoercion Provisions (Added in VAWA Reauthorization Act of 2022)**

An owner agent may not coerce, intimidate, threaten, interfere with, or retaliate against any person who exercises VAWA protections, assists another person in exercising their VAWA protections, or participates in a VAWA investigation or enforcement activity.

**11. Protection to Report Crimes from Home (Added in VAWA Reauthorization Act of 2022)**

Owner agents, residents, guests, and applicants have the right to seek law enforcement or emergency assistance on their behalf or on the behalf of another person seeking assistance and shall not be penalized based on such requests for assistance or their status as a victim of criminal activity. Prohibited penalties include actual or threatened:

- Assessment of monetary or criminal penalties, fines, or fees
- Eviction
- Refusal to rent or renew tenancy
- Refusal to issue occupancy permit or landlord permit
- Closure of the property or designation of the property as a nuisance or similarly negative designation

**H. Housing for Older Persons**

The Housing for Older Persons Act of 1995 (HOPA) exempts certain types of “housing for older persons” from the Fair Housing Act’s prohibitions against discrimination on the basis of familial status.

Therefore, projects may be designated as housing for older persons (as defined in the project’s Application and recorded Declaration/Lien) in one of the following ways and not be in violation of Fair Housing:

1. 100% of the units are restricted for households in which all members are age 62 or older (see 24 CFR Part 100.303); or
2. At least 80% of the units in the entire development are occupied by households in which at least one member is age 55 or older. The remaining 20% of the units may also be restricted for households in which at least one member is 55 or older, may have a lower age restriction, or may be left open without any age restrictions; however, the owner must ensure that at least 80% of the units remain occupied by households that meet the age definition. This determination is left up to the owner. The policy elected by the owner in regards to the remaining 20% of the units must be implemented equally for all applicants and must be placed in writing as part of the development’s Tenant Selection Plan. In addition, the remaining portion of units not counted for purposes of meeting the 80% requirement may not be segregated within the community or facility.

HUD has noted that phrases such as “adult living,” “adult community,” or similar statements should not be used to market developments that fall under the 80% at 55 requirements. Rather, the property should be more specifically advertised as senior housing for households in which at least one household member is 55 years of age or older.

Moreover, the owner may not evict or terminate the leases of families with children or other individuals under the age of 55 in order to achieve the elderly occupancy requirements on the 80% of the units.

For more information on the 80% at 55 restrictions, see 24 CFR Part 100.304 through 100.308. This regulation is also available as “Implementation of the Housing for Older Persons Act of 1995; Final Rule” located in the Federal Register, Vol. 64 No. 63 from April 2, 1999. This document is included in Appendix F.

A project’s housing for older persons restrictions should be clearly defined in the Application and recorded Declaration/Lien, and the owner must follow the restrictions defined therein. If a project receives federal funding from HUD or USDA, the owner should check those regulations for other potential definitions. Units in HUD and RD age-restricted housing generally can be occupied by households that meet the age requirements or that are disabled. Disabled households do not qualify for elderly restricted units in HOME/CDBG/NSP housing unless they also meet the age restrictions. When HOME/CDBG/NSP-assisted units are mixed with HUD or RD elderly housing, the HUD or RD definitions should be followed.

## **I. Meaningful Access for Persons with Limited English Proficiency**

Persons who, as a result of national origin, do not speak English as their primary language and who have limited ability to speak, read, write or understand English (“limited English proficiency persons” or “LEP”) may be entitled to language assistance under Title VI of the Civil Rights Act of 1964 in order to receive a particular benefit or service. In accordance with Title VI, its implementing regulations and Executive Order 13166, the owner must agree to take reasonable steps to ensure meaningful access by LEP persons to activities funded with federal funds.

Any of the following actions could constitute “reasonable steps” depending on the circumstances. This is not, however, an exhaustive list of possible actions:

- Acquiring translators to translate vital documents, advertisements, or notices
- Acquiring interpreters for face-to-face interviews with LEP persons;
- Placing advertisements and notices in newspapers that serve LEP persons;
- Partnering with other organizations that serve LEP populations to provide translation, interpretation, or dissemination of information regarding the project;
- Hiring bilingual employees or volunteers for outreach and intake activities; or
- Contracting with a telephone line interpreter service.

## **J. Religious and Faith-Based Organizations**

### **1. Equal Treatment and Religious Identity**

Organizations that are religious or faith-based are eligible to participate in the CDBG and HOME programs on the same basis as any other organization. A religious organization that participates in the CDBG or HOME program will retain its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct CDBG or HOME funds to support any inherently religious activities( such as worship, religious instruction, or proselytization) and does not discriminate against program participants on the basis of religion or religious belief.

Among other things, faith-based organizations may use space in their facilities, without removing or altering religious art, icons, scriptures, or other religious symbols. In addition, a CDBG or HOME-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization’s name, select its board members on a religious basis, and include religious references in its organization’s mission statements and other governing documents.

### **2. Beneficiaries and Anti-Discrimination**

The organization may not discriminate against program participants or potential program participants (e.g. tenants, homeowners, or applicants) on the basis of religion, religious belief, the refusal to hold a religious belief, or the refusal to attend or participate in a religious practice.

### **3. Separation of Explicitly Religious Activities**

Organizations that are directly funded under the CDBG or HOME program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the assistance. If an organization conducts such activities,

the activities must be offered separately, in time or location, from the assistance funded under this part, and participation in any such explicitly religious activities must be voluntary for the program beneficiaries.

#### **4. Alternative Provider**

If a program participant or potential program participant objects to the religious character of an organization that provides services under the program, that organization shall, within a reasonably prompt time after the objection, undertake reasonable efforts to identify and refer the program participant to an alternative provider to which the participant has no objection. Except for services provided by telephone, internet, or similar means, the referral must be to an alternate provider in the reasonable geographic proximity to the organization making the referral. In making the referral, the organization shall comply with applicable privacy laws and regulations. Owners shall document any such objections from program participants and prospective program participants and any efforts made to refer such objecting participants to alternate providers.

#### **5. Structures**

Program funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for explicitly religious activities. Program funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting program eligible activities. When a structure is used for both program eligible and explicitly religious activities, program funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities.

### **Part 4.3 HOME/CDBG/NSP/HTF-assisted Units in Tax Credit Developments**

A Section 42 Rental Housing Tax Credit (RHTC) development may also receive HOME/CDBG/CDBG-D/NSP/HTF funds, resulting in a certain number of units reserved as both tax credit and HOME/CDBG/CDBG-D/NSP/HTF assisted units. Units that are under multiple funding programs must follow the compliance rules of both programs. In some cases when program compliance regulations differ, the owner must follow the stricter of the two rules, though in other cases the rules are completely different and both sets must be applied.

The following is a non-exhaustive list of common issues management may face when combining tax credits with federal funding programs. This is not meant as an exhaustive listing. For more information on IHCD's tax credit compliance regulations, please refer to the current edition of the *Indiana Rental Housing Tax Credit Compliance Manual*.

#### **A. Combining Programs: Rent and Income Limits and Utility Allowances**

1. HOME/CDBG/CDBG-D/NSP/HTF and RHTC rent and income limits may be different within the same county for the same year. IHCD releases a separate set of limits for each program. For a unit under multiple programs, management must check against all sets of income and rent limits to ensure compliance with all funding programs. \*NOTE: The HTF program requires all HTF-assisted units to be income and rent restricted at 30% HTF limits. The HTF program has its own HUD-published set of income and rent limits. Owners with HTF-assisted units must refer to this specific income and rent limit chart.
2. The RHTC program does not include rental assistance in the gross rent calculation. For HOME/CDBG/CDBG-D/NSP/HTF assisted units, tenant-based rental assistance is included in the gross rent calculation. For purposes of determining whether a program assisted unit is in compliance with the rent limits, the sum of the tenant-paid rent portion + tenant-based rental assistance + utility allowance + non-optional fees must be at or below the applicable HOME/CDBG/CDBG-D/NSP/HTF rent limit. Special rules apply for project-based rental assistance as discussed in Part 3.2(B)(4).
3. HOME funded projects that received a commitment of HOME funds after 8/23/13 must use a project-specific utility allowance for all HOME-assisted units. A PHA chart is not an acceptable utility allowance methodology for HOME-assisted units that received a commitment of HOME funds after 8/23/13. If a unit is both RHTC and HOME-assisted and the tenant

has a Section 8 voucher, this creates a conflict between program rules, because the RHTC program requires the PHA chart to be used when the tenant has a voucher. In this case, two separate rent checks must be performed.

- a. RHTC Compliance: tenant rent + PHA utility allowance + non-optional fees = gross rent. Gross rent must not exceed the applicable RHTC rent limit.
- b. HOME Compliance: tenant rent + rental assistance + project-specific utility allowance (not the PHA chart) + non-optional fees = gross rent. Gross rent must not exceed the applicable HOME rent limit.

4. IHCD must specifically approve rents for projects with HOME and/or HTF assisted units. The owner must submit IHCD Compliance Form # 46: HOME & HTF Rent Update Form via [homerentupdate@ihcda.in.gov](mailto:homerentupdate@ihcda.in.gov) at least annually to request approval of its proposed rents for HOME and/or HTF assisted units, even if no they are proposing no change.

## **B. Combining Programs: Certifications and Verifications**

1. 100% tax credit projects do not have to perform annual income recertifications. However, those units that are also HOME or HTF-assisted must have a full annual recertification to comply with IHCD's program requirements. Annual income recertifications do not apply to CDBG/CDBG-D/NSP assisted units unless the unit is also HOME or HTF-assisted.
2. The tax credit program allows household self-certification for assets if the total combined value of assets is less than or equal to \$5000. The "Under \$5000 Assets Affidavit" self-certification **cannot** be used to satisfy the verification requirements on HOME/CDBG/CDBG-D/NSP/HTF assisted units. For these units, assets must be verified through third-party.
3. In HOME/CDBG/CDBG-D/NSP/HTF, verifications are valid for six months. For RHTC, verifications are only valid for 120 days. Therefore, for units subject to multiple programs, use the stricter tax credit rule and make sure that all verification documents are no older than 120 days as of the effective date of the certification.
4. HOME/CDBG/CDBG-D/NSP/HTF has stricter income verification requirements when tenant-provided verification is used. If tax returns are used, the tax return must be a certified copy obtained by completing IRS Form 4506 "Request for Copy of Tax Return." For units subject to both programs, apply the stricter verification requirements.
5. If paystubs are used to verify employment income, for HOME/CDBG/CDBG-D/NSP/HTF the number of paystubs obtained must amount to a full two consecutive months of pay. For RHTC, the owner must obtain the four most recent paystubs. When combining programs, obtain the number of paystubs needed to satisfy both of these requirements.
7. When verifying income for households in HOME/CDBG/CDBG-D/NPS/HTF assisted units, management may not rely on income statements provided by the public housing authority. However, IHCD does allow this practice for RHTC compliance.

## **C. Combining Programs: Student Status**

1. The 2013 revision to the HOME final rule added a student status requirement for all HOME-assisted units. See Part 4.1G for more information on the HOME student rule. Households applying/residing in units that are both RHTC and HOME-assisted must meet both program definitions of student status eligibility. The HOME student rule does not apply to CDBG, CDBG-D, NSP, or HTF-assisted units.
2. The CDBG, CDBG-D, and NSP programs do not limit occupancy by full-time students. However, for CDBG/CDBG-D/NSP/HTF assisted RHTC units, the tax credit full-time student rules apply.

## D. Combining Programs: Fair Housing and Related Nondiscrimination Requirements

1. Upon project entry, households living in all HOME/CDBG/CDBG-D/NSP/HTF assisted units must be given the Fair Housing brochure entitled “Are You a Victim of Housing Discrimination.” The household must sign documentation acknowledging the receipt of this brochure at time of move-in. Although this is not a RHTC requirement, all HOME/CDBG/CDBG-D/NSP/HTF assisted units in a tax credit development must have a signed copy of the acknowledgement located in the tenant file.
2. Effective March 5, 2012, all HUD funded properties (including HOME/CDBG/CDBG-D/NSP/HTF funding) are subject to the rule entitled “Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity.” According to this rule, HUD-assisted properties must make housing available without regard to actual or perceived sexual orientation, gender identity, or marital status. Additionally, HUD-assisted housing providers are prohibited from inquiring about the sexual orientation or gender identity of applicants and occupants for the purpose of determining eligibility for housing.
3. HOME/CDBG/CDBG-D/NSP/HTF assisted units are covered by Section 504 accessibility requirements, including the requirement that the owner must pay for reasonable modification requests. A tax credit development with these funding sources is subject to the Section 504 requirements.
4. A project is subject to VAWA compliance if it has tax credits, HTF, or HOME funding (if the HOME funds were committed on or after December 16, 2016).

## E. Combining Programs: IHEDA Monitoring and Inspection

A development with tax credits and IHEDA HOME/CDBG/CDBG-D/NSP/HTF funds will be monitored/inspected by IHEDA for compliance with each program.

1. The tax credit file monitoring will occur once every three years (see Part 7.6 of the *Indiana Rental Housing Tax Credit Compliance Manual* for an explanation of the tax credit monitoring cycle and sample size).
2. The HOME/CDBG/CDBG-D/NSP/HTF assisted units will be monitored for program compliance at least once every three years of the affordability period based on the monitoring cycle and sample size defined in this Part 6.4 of this manual. Note: the monitoring cycle and sample size may be different for each program.
3. A HOME or HTF-assisted project containing 10 or more total units is subject to annual financial review. See Part 6.4C for additional information.

## F. Combining Programs: Over-income Units (HOME Only)

For tax credit purposes, a unit is not considered to be an over-income unit until the household income exceeds 140% of the federal minimum set-aside election. When this occurs, the 140% Rule or Next Available Unit Rule goes into effect. See Part 5.1C of the *Indiana Rental Housing Tax Credit Compliance Manual* for more information on the Next Available Unit Rule.

For HOME purposes, a unit is considered to be over-income (and therefore a temporarily noncompliant unit) when household income exceeds 80% of AMI. Under the HOME program, households that exceed 80% of AMI are charged 30% of adjusted income as rent and special rules go into effect to replace the over-income unit.

For units that are under both programs, the tax credit over-income rule overrides the HOME over-income rule. An over-income HOME household (over 80% HOME AMI) living in a tax credit unit is not subject to increased rent under the HOME over-income rules. The tenant may pay no more than the lesser of the applicable tax credit rent limit or the HOME rent limit. However, the unit may still need to be redesignated from low-HOME to high-HOME.

Note: Neither program permits eviction or termination of tenancy due to income increases, even if the household exceeds the 140% or 80% levels.

## G. Combining Programs: Lead-Based Paint Requirements

1. Households living in assisted units built prior to 1978 must be given the Lead-Based Paint brochure entitled “Protect Your Family from Lead in Your Home.” The household must sign documentation acknowledging the receipt of this brochure at time of move-in. Although this is not a RHTC requirement, households residing in HOME/CDBG/CDBG-D/NSP/TCAP/ HTF assisted units in a tax credit development should have a signed copy of the acknowledgement located in the tenant file.
2. Federally funded projects built prior to 1978 are subject to ongoing compliance with lead-based paint regulations, as described in Part 4.5 C below. Tax credit properties with HOME/CDBG/CDBG-D/NSP/TCAP/HTF funding must comply with these regulations.

## Part 4.4 Projects with Development Fund Loans or Grants

The Indiana Affordable Housing and Community Development Fund (“Development Fund”), formerly known as the Trust Fund, was established in 1989 to provide financing options for the creation of safe, decent, and affordable housing and for economic development projects in Indiana communities. Development Fund regulations may be found in Indiana Code 5-20-4.

### A. Income and Rent Restrictions

The Development Fund can be used to finance assisted units for occupancy by households up to 80% of area median income. However, Indiana Code governing the Development Fund requires that at least 50% of the dollars allocated be used to serve very low-income households (those earning less than 50% AMI). **Therefore, at least 50% of the Development Fund assisted units in a project must be designated for households at or below the 50% rent and income limits, even if for other program purposes all units are restricted at 60% or 80%.** Development Fund assisted units may target special needs populations.

When Development Fund is combined with other funding sources, those programs’ income and rent limits will apply.

For purposes of rent limits, gross rent must be below the applicable rent limit. Gross rent for Development Fund is defined as the sum of tenant-paid rent portion + utility allowance + non-optional fees (the same calculation as for tax credits). Rental assistance/subsidy is not included in the gross rent calculation for purposes of Development Fund compliance.

### B. Income Recertification

For purposes of income eligibility, household income must be calculated and verified at the time of initial move-in using the methodology described in 24 CFR Part 5 and in Chapter 5 of HUD Handbook 4350.3. Eligibility is based on gross income, not net or adjusted income. This is the same income certification procedure as used for the other rental programs discussed in this manual.

Development Fund assisted units are not required to complete a full annual recertification of household income but must annually certify household size and rent.

### C. Lien and Restrictive Covenants

Development Fund assisted projects will be subject to a Development Fund Lien and Restrictive Covenant Agreement (“LRCA”) that must be executed and recorded against the property. When Development Fund is combined with other funding sources, the term of the Development Fund LRCA will be the applicable program’s affordability period but will not be for a period of less than 15 years.

Upon occurrence of any of the following events during the Development Fund affordability period, the entire sum secured by the lien, without interest, shall be due and payable by developer and/or owner upon demand. Repayment may be demanded upon: (1) transfer or conveyance of the real estate by deed, land contract, lease, or otherwise during the affordability period;

(2) commencement of foreclosure proceedings by any mortgagee (or deed in lieu of foreclosure, within the affordability period; or (3) determination that the assisted units are not being used as a residence by a qualifying tenant or not leased according to the program affordability requirements. The award recipient will be responsible for repaying IHCD.

At the end of the affordability period, if the borrow/recipient has met all conditions, the lien will be released.

## Part 4.5 Suitable for Occupancy

### A. General Requirements and Recordkeeping

In addition to being rent-restricted and occupied by qualified households, all program units and buildings must be suitable for occupancy. Owners must annually certify that all buildings and units in the project are decent, safe, and sanitary considering all applicable health, safety, and building codes. If any health, safety, or building code inspections result in a notice of violation, this must be reported. Original reports/notices of violations must be maintained as part of the owner's recordkeeping and copies must be submitted to IHCD along with the Annual Owner Certification of Compliance.

Vacant units must also be suitable for occupancy and cannot be cannibalized for parts. Because the owner is responsible for maintaining all units in a manner that is suitable for occupancy at all times, the cost of preparing vacant units for occupancy cannot be passed on to tenants or applicants. During the inspection process, the IHCD inspector or contracted inspector may ask to inspect a mix of both occupied and vacant units.

Properties must meet both HUD's Uniform Physical Conditions Standards (UPCS) and local health, safety, and building codes. UPCS requires an inspection of the following inspectable areas: building exterior, building systems, dwelling units, common areas, and health/safety concerns.

For information on IHCD's inspection process, see Part 6.4, as well as the *Physical Inspection Compliance Guide* available in Appendix D.

In addition to program specific compliance, Indiana Code 32-31-8-5 "Landlord Obligations" states:

"A landlord shall do the following:

- (1) Deliver the rental premises to a tenant in compliance with the rental agreement, and in a safe, clean, and habitable condition.
- (2) Comply with all health and housing codes applicable to the rental premises.
- (3) Make all reasonable efforts to keep common areas of a rental premises in a clean and proper condition.
- (4) Provide and maintain the following items in a rental premises in good and safe working condition, if provided on the premises at the time the rental agreement is entered into:
  - (A) Electrical systems.
  - (B) Plumbing systems sufficient to accommodate a reasonable supply of hot and cold running water at all times.
  - (C) Sanitary systems.
  - (D) Heating, ventilating, and air conditioning systems. A heating system must be sufficient to adequately supply heat at all times.
  - (E) Elevators, if provided.
  - (F) Appliances supplied as an inducement to the rental agreement."

### B. Casualty Loss

#### 1. Definition

A casualty loss is defined by the IRS as "damage destruction, or loss of property resulting from an identifiable event that is sudden, unexpected, or unusual" (IRS Publication 547 and Publication 584). Page 6-5 of the 8823 Guide defines those terms as follows:

- Sudden event: "one that is swift, not gradual or progressive."
- Unexpected event: "one that is ordinarily unanticipated and unintended."

- Unusual event: “one that is not a day-to-day occurrence and that is not typical.”
- This explicitly does not include property damage “if the damage occurred during normal use, the owner willfully caused the damage or was willfully negligent, or was progressive deterioration such as damage caused by termites.”

While this definition is from the RHTC program, IHCDCA applies this same definition for programs covered by this manual.

## **2. Reporting Requirements**

An owner that experiences a casualty loss must:

1. Inform IHCDCA of the loss in writing within 10 days of the incident;
2. Submit a plan to IHCDCA within thirty (30) days that sets a timeframe for reconstruction or replacement of lost units; and
3. Inform IHCDCA when the units have been reconstructed or replaced.

Casualty loss information must be reported via the “Casualty Loss Form” available online in Appendix D.

If an owner fails to report a casualty loss to IHCDCA, the owner and management company may be recommended for suspension from the program.

## **C. Ongoing Lead Based Paint Compliance**

Projects built before 1978 are subject to ongoing compliance with lead-based paint regulations.

1. Owners must inform current and new occupants of the lead hazard reduction methods that took place and where lead-based paint exists in their units. The brochure entitled “Protect Your Family from Lead in Your Home” must be provided to all new occupants upon move-in. Signed documentation of the receipt of this brochure by the household must be maintained in each tenant file.
2. Owners should request, in writing, that the residents monitor lead-based paint surfaces and inform the owner of potential hazards.
3. Regular maintenance and evaluation of the lead hazard reduction must be performed. The owner is responsible for:
  - A visual inspection of lead-based paint at unit turnover or at least annually on occupied units;
  - Repair of all unstable paint;
  - Repair of encapsulated or enclosed areas that are damaged; and
  - Owners must continue to comply with the notification requirements when additional lead hazard evaluation and hazard reduction activities are performed.

## **Part 4.6 Permanent Supportive Housing Units for Persons Experiencing Homelessness**

Applications funded as permanent supportive housing (“PSH”) for persons experiencing homelessness are subject to the following requirements:

- Must utilize a Housing First approach. Housing First is an evidence-based approach to engage and rapidly house individuals experiencing homelessness without any test of housing readiness and without a requirement for participation in services.
- PSH units are permanent, rental housing units. There is no time limit on occupancy- i.e., PSH is not a transitional housing or temporary housing model.
- PSH tenants have a lease and all the rights and responsibilities of a lease holder. The lease may not include language mandating participation in services.
- PSH units must serve persons experiencing homelessness who are identified through local Coordinated Entry as being the most vulnerable and in need of supportive housing. Rather than creating a project-specific waitlist, vacant units must be filled by utilizing names from the top of the local Coordinated Entry list.
- Tenant selection plans:
  - Must be written specific to supportive housing principles
  - Must utilize Coordinated Entry as the referral source

- May not screen out individuals based on a minimum income test, credit history, previous landlord history including previous evictions, a history of or active substance use, or history of homelessness
  - Must include low-barrier criminal background screening
- Supportive services must be voluntary, not a condition of occupancy. However, staff must continually engage and build relationships with tenants to encourage participation in services. Participation in services cannot be required for the tenant to obtain or maintain housing, unless part of a specific housing retention plan to avoid an eviction due to specific lease violations.
- Services must be provided using a harm reduction approach to substance use disorders. Abstinence or participation in services/treatment cannot be mandated as a condition of occupancy.
- Must utilize eviction prevention philosophy, strategies, practices, and policies as formulated in a written eviction prevention plan specific to the project. IHCD provides eviction prevention best practices and templates on its [Eviction Prevention and Low Barrier Screening](#) webpage.
- Must report through the Homeless Management Information System (“HMIS”)

## Section 5: Qualifying Tenants for Program Units

Applicants for program units should be advised early in the application process that there are maximum income limits that apply to the units. Management should explain to potential tenants that the anticipated income of all adults (and the unearned income of minors) expecting to occupy the unit must be verified prior to occupancy.

Federal HOME regulations allow various methods of calculating annual income. However, IHCD mandates that all owners use the methodology found in 24 CFR Part 5.609 (often referred to as the “Section 8 methodology”). This methodology is also required for IHCD funded CDBG/CDBG-D/HTF/NSP projects, as well as by the tax credit program.

For additional information on determining income eligibility, refer to the following resources (all included in Appendix A):

- Chapter 5 of HUD Handbook 4350.3 *Occupancy Requirements of Subsidized Multifamily Housing Programs*
  - Section 1- Determining Annual Income
  - Section 3- Verification
  - Exhibit 5-1- Income Inclusions and Exclusions
  - Exhibit 5-2- Assets
  - Appendix 3- Acceptable Forms of Verification
- Streamlining Administrative Regulations for Public Housing, Housing Choice Voucher, Multifamily Housing, and Community Planning and Development Programs: Final Rule 3/8/17
- Streamlining Administrative Regulations for Multifamily Housing Programs and Implementing Family Income Reviews Under the Fixing America’s Surface Transportation (FAST) Act: Final Rule 5/27/20
- *Technical Guide to Determining Income and Allowances for the HOME Program*

### Part 5.1 Tenant Qualification & Certification Process

#### A. Necessary Documentation for a Tenant File

Households are qualified for the program only if proper documentation verifying the household’s eligibility is obtained and maintained in the tenant file. Forms referenced below can be found on [IHCD’s compliance webpage](#).

**IHCD accepts electronic signatures from tenants, owner agents, and third-party income verifiers.**

**At a minimum, the following items must be included in the file and must be organized in chronological order for easy review:**

1. Initial Tenant Application for residency (sample entitled “Rental Application” is available in IHCD’s compliance forms)
2. Tenant Income Certification Questionnaire (see 4.2. below) completed at time of application, including certification of assets and disposal of assets if applicable. A separate Tenant Income Certification Questionnaire must be completed by each adult household member. For HOME and HTF-assisted units, new Questionnaires must be completed as part of the income recertification process;
3. Tenant Income Certification (see 5.1 B below) signed by each adult member of the household for every year the household resides at the property. The TIC must have proper signature and effective dates clearly stated;
4. Verifications of all sources of earned and unearned income and of all asset sources noted on the Tenant Income Certification Questionnaires. See Part 5.3 for more information on verification requirements;
5. For HOME-assisted units, a separate “HOME Student Status Certification” (Form #36) completed by each adult member of the household each year, along with any additional student status verifications needed. If the unit is also an RHTC unit, the “Student Status Self-Certification for RHTC” (Form #35) must also be completed by each adult household member.
6. Any other documentation verifying the household’s eligibility (e.g., unborn child self-certification, joint custody of a child documentation, all management clarification documents, etc.);

7. Initial and subsequent leases and all lease addenda executed by the tenant and owner;
8. Documentation of the receipt of the applicable brochures (Fair Housing & Lead Based Paint); and
9. For tenants receiving Housing Choice Vouchers (tenant-based Section 8), a copy of the Housing Assistance Payment (HAP) Contract and the current HAP Amendment from the Public Housing Authority or a copy of the current HUD Form 50058. For tenants in Section 8 Project Based Voucher (PBV) units, a copy of the current HUD Form 50058 showing the amount of rental assistance. For tenants in Section 8 Project Based Rental Assistance (PBRA) units, a copy of the current HUD Form 50059 showing the amount of rental assistance.

NOTE: A recertification file for CDBG, CDBG-D, or NSP units will only include the following documentation: a new Tenant Income Certification Form (using Form #39) and the new lease and all addenda. Verification of income and assets is not necessary at recertification for these programs. It is also unnecessary to complete a Questionnaire at recertification. If the unit is also tax credit or HOME or HTF-assisted, those program recertification rules will apply.

All documents included in the tenant file must be fully completed, signed, and dated. IHCDCA will not accept documents that are incomplete, that have been marked with correction fluids (i.e., whiteout), or where information has been obliterated with pen or marker. See 5.1 C below for information on how to properly correct documents in a tenant file.

## **B. Tenant Income Certification (TIC) Form**

Every tenant file must contain a Tenant Income Certification (TIC) form, regardless of whether or not that unit/tenant also has an income certification from another program in the file (e.g., HUD Form 50058/50059 or RD Form 3560-8). IHCDCA's Tenant Income Certification form used for the HOME, HTF, CDBG, and NSP programs includes information that is not found on these other forms, such as program income and rent limits, the program set-aside for the unit, the certification effective dates, etc. Therefore, properties that have multiple funding sources will need to have multiple signed tenant income certification forms in their files to demonstrate compliance with each separate program.

**Since 2012, IHCDCA's HOME/HTF/CDBG/NSP TIC (Form #38) is a mandatory form that must be used in all tenant files. IHCDCA will no longer accept any other TIC form, unless the TIC is submitted to IHCDCA and specifically approved. However, if the property is also funded through the RHTC program, the IHCDCA tax credit TIC must be used instead (Form #22).**

The TIC must list the IHCDCA rent and income set-aside for the unit/household. Therefore, the rent and income restrictions should be listed as 30%, 40%, 50%, 60%, or 80%, not the actual AMI % of the household. For example, at time of move-in, a household may actually have income at 47% of AMI. IHCDCA does not need to know this, but rather only needs to know the set-aside the household qualifies under, in this case, the 50%, 60%, or 80% limit. (\*Note: Certain, but not all, CDBG-D and NSP projects may be allowed units set-aside at 120% AMI as defined in the award documents).

## **C. Correcting Documents**

IHCDCA will not accept documents that are incomplete, that have been marked with correction fluids (e.g., whiteout), or where information has been obliterated with pen or marker. To correct a document, management should draw one line through the erroneous information and write the corrected information to the side. All corrections should be dated and initialed. Corrections on forms filled out by the management should be initialed by the management agent. Corrections on forms filled out by the tenant should be initialed by the tenant. Corrections to the lease should be initialed by both parties.

If management fails to obtain the necessary paperwork at time of certification, verifications can be retroactively created to document the income and assets that were in place at the time of certification. All retroactive documents must be signed with the current date, but noted as being "true and effective" as of the actual certification effective date. The "true and effective" statement must be written on each form that is created or signed after the effective date. Neither tenants nor management are ever permitted

to backdate documents. The recertification effective date continues on its regular annual cycle, not the date the documents were completed retroactively.

*Example: Mrs. Smith is due for her annual recertification on December 20<sup>th</sup>. However, the property manager was distracted putting up holiday decorations and forgot to send out a recertification notice. Therefore, Mrs. Smith does not come in to the office to complete her paperwork until January 2<sup>nd</sup>. Mrs. Smith should sign all paperwork with the current date (January 2<sup>nd</sup>) but should make a note at the bottom of each form stating “information true and effective as of December 20<sup>th</sup>.”*

**D. One Form per Household or One Form per Member?**

Form	1 form per household signed by all adults	1 separate form per each adult member
Income Questionnaire	-	YES
Tenant Income Certification	YES	-
All other verification documents	-	YES
Student Status Certification (for HOME)	-	YES

**Part 5.2 Tenant Application & Income Certification Questionnaire**

A fully completed Application and Income Certification Questionnaire is critical to an accurate determination of tenant eligibility. An Application must be completed by the household at initial move-in. An Income Certification Questionnaire must be completed at move-in and on recertification files for HOME or HTF-assisted units.

**IHCDA’s Income Certification Questionnaire (Form # 23) is a mandatory form that must be used in all tenant files. IHCDA will no longer accept any other Questionnaire form, unless the Questionnaire is submitted to IHCDA and specifically approved. IHCDA revised the Income Certification Questionnaire in September 2022. That revised version of the form must be utilized for all files with an effective date on or after January 1, 2023.**

At the time of application, it is the management agent’s responsibility to obtain sufficient information on all prospective tenants to completely process the application, determine household eligibility, and complete the Tenant Income Certification (TIC) form. IHCDA requires that each adult household member complete a separate Income Certification Questionnaire at time of application, and for HOME and HTF-assisted units at each recertification. The Application and Income Certification Questionnaire are the first steps in the tenant certification process. The information furnished on the Application and Questionnaire should be used as a tool to determine all sources of income (including total cash value of assets and income from assets), household composition, and student status.

HUD Handbook 4350.3 lists guidelines which the owner may want to adopt for the application process. The application should include:

1. The name of each person that will occupy the unit (legal name should be given just as it will appear on the Lease and Tenant Income Certification);
2. All sources and amounts of current and anticipated annual income expected to be derived during the twelve (12) month certification period. Include assets now owned and indicate whether or not household members disposed of assets for less than Fair Market Value during the previous two years;
3. The current and anticipated student status of each applicant (for HOME-assisted units);
4. A screening process (i.e. previous landlord’s rental history, credit information, etc.). Owners should ask applicants whether the household’s assistance or tenancy in a subsidized housing program has ever been terminated for fraud, nonpayment of rent, or failure to cooperate with recertification procedures;

5. The signature of the applicant and the date the application was completed. It may be necessary to explain to the applicant that all information provided is considered confidential and will be handled accordingly; and
6. Collection of demographic data: IHEDA requires the collection and reporting of the following information for all program tenants:
  - Race
  - Ethnicity
  - Sex
  - Family composition
  - Age (Date of Birth)
  - Income
  - Use of Section 8 (or similar) Rental Assistance Program
  - Disability Status; and
  - Monthly Rental Payment

To meet the demographic data collection requirements, owners must annually report demographic data for all household members (each member not just the head of household) living in their developments. IHEDA provides a sample “Race and Ethnicity Data Reporting Form” (Form #37) that owners may utilize to gather this information. This information should only be obtained after a move-in has been approved so that it cannot be construed that the information was used as part of tenant selection / screening.

In order to reduce administrative burden, it is IHEDA’s intent to capture all demographic information through the online reporting system as part of the Annual Owner Certification tenant event submission. Therefore, the owner must obtain demographic data for each household member and report this information when submitting tenant events online through <https://ihedaonline.com>.

### **Part 5.3 Income Verification**

The income of every prospective occupant of the unit must be verified. All regular sources of income, including income from assets, must be verified. Verifications must be received by the management agent prior to move-in. Verifications must contain complete and detailed information and include, at a minimum, direct written verification from all sources of regular income and income of assets.

#### **A. Effective Term of Verification**

Verifications of income are valid for six months from the date of receipt by the owner/management and must be obtained prior to move-in or recertification effective date. After this time, if the tenant has not yet moved in or recertified, new verification must be obtained. Verifications that are more than six months old as of the effective date of the move-in or recertification event are invalid.

#### **B. Methods of Verification**

Three methods of verification are permitted: third-party verification from the source, third-party verification from the tenant (“tenant-provided documents”), and self-certification. Per the updates to HUD Handbook 4350.3, Rev-1, CHG-4 released in 2013 (see Chapter 5, Part 5-13), both verification provided from the source and tenant-provided documents (formerly referred to as second-party verification) are now equally acceptable types of third-party documentation.

Owners/managers must set a policy on their preferred method of verification and must conduct verifications consistently for all households.

##### **1. Third-Party Written or Verbal Verification Provided by the Source**

IHEDA does not require that the owner/management agent use particular forms for third-party verifications; however, sample third-party verification forms are provided on [IHEDA’s compliance webpage](#). All requests for income verification must:

- a) State the reason for the request;

- b) Include a release statement signed and dated by the applicant or tenant; and
- c) Provide a section for the employer or other third-party source to state the applicant/tenant's current anticipated gross annual income or rate of pay, number of hours worked, and frequency of pay. Over-time hours, bonuses, tips, and commissions must be included, as well as the probability and effective date of any increase during the next 12 months. Spaces should also be available for a signature, job title, phone number, and date. If forms are returned with any information incomplete, management MUST contact the source and complete a clarification form to document incomplete information.

**Note: Owners must send and receive verification forms directly to/from the third-party, not through the applicant or tenant.**

When written verification is not possible prior to move-in, direct contact with the source will be acceptable to IHCD only as a last resort and should be followed by written verification. The conversation should be documented in the tenant file to include all information that would be contained in a written verification. The information must include the name, title, and phone number of the contact, the name of the onsite management representative accepting the information, and the date the information was obtained.

In addition, if the owner receives third-party verifications that are not clear or are not complete, a documented verbal clarification may be accepted if it includes the name and title of the contact, the name and signature of the onsite management representative accepting the information, and the date the information was obtained.

Furthermore, if after requesting third-party verification, the third-party indicates that the information must be obtained from an automated telephone system, the owner may document the information provided from the telephone system. The documentation must state the date the information is received, all of the information provided, and the name, signature, and title of the person receiving the information.

## 2. Third-Party Tenant-Provided Documents

Per HUD Handbook 4350.3, REV-1, CHG-4, tenant-provided documents are now considered third-party documents and are equally as acceptable as verification documents provided by the source. The Handbook states in Part 5-13(B)(1)(b)(1) that the owner may use:

An original or authentic document generated by a third-party source... Such documentation may be in possession of the tenant (or applicant), and commonly referred to as tenant-provided documents. These documents are considered third-party verification because they originated from a third-party source.

Examples of tenant-provided documentation that may be used includes, but is not limited to: pay stubs, payroll summary report, employer notice/letter of hire/termination, SSA benefit letter, bank statements, child support payment stubs, welfare benefit letters and/or printouts, and unemployment monetary benefit notes.

When using tenant-provided information, the owner must consider the following:

- Is the document current? Circumstances may have changed since the document was created.
- Is the document complete?
- Is the document an unaltered original copy?

The following requirements apply to tenant-provided documents:

- a. **Using Paystubs for Employment Verification:** If utilizing paystubs for employment verification, the owner must obtain two consecutive months of paystubs from the tenant/applicant if the job provides steady employment. If employment is sporadic or seasonal, the owner should obtain information that covers the entire previous 12-month period.

- b. **Using Bank Statements:** If utilizing bank statements as asset verification, the owner must obtain the six most recent statements to verify a checking account and the most recent statement to verify a savings account.
- c. **Using Tax Returns for Income Verification:** If utilizing tax returns as income verification, the owner must obtain a certified copy by completing IRS Form 4506 "Request for Copy of Tax Form."

The owner must be able to reasonably project expected income for the next (12 months from the tenant-provided documents).

The owner may use information obtained electronically from fax, e-mail or the internet. A printout from a reliable source is adequate verification.

### 3. Tenant Self-Certification

As a last resort, the owner may accept a tenant's signed affidavit if third-party or tenant-provided verifications cannot be obtained. The owner should try to refrain from using self-affidavits except where absolutely necessary.

If a self-affidavit must be used to verify income or asset sources, the owner is required to document the tenant file by explaining the reason third-party or tenant-provided verification could not be obtained and showing all efforts that were made to obtain verification. Per Chapter 5 of the HUD Handbook 4350.3, the following documents should be placed in the tenant file:

- a. A written note to the file explaining why third-party or tenant-provided verification is not possible; and/or
- b. A copy of the date-stamped original request that was sent to the third-party; and/or
- c. Written notes or documentation indicating follow-up efforts to reach the third-party to obtain verification; and/or
- d. A written note to the file indicating that the request has been outstanding without a response from the third-party.

The owner may accept self-certification if there is a fee associated with receiving the third-party verification (except required certified tax returns as discussed above). If the owner chooses to pay the fee to obtain the third-party verification, this cost cannot be passed on to the tenant or applicant.

### C. Guidance for Specific Income Sources

The following section provides brief guidance on some common and/or complicated sources of income to verify.

For complete information concerning included income and acceptable forms of income verification, see HUD Handbook 4350.3 CHG-4, specifically Chapter 5 and "Appendix 3: Acceptable Forms of Verification" and the *Technical Guide for Determining Income and Allowances* (both sources available in Appendix A).

#### 1. Social Security and Supplemental Security Income

IHCDA will accept the Annual Benefit Award letter provided from the Social Security office to verify Social Security benefits. However, all Supplemental Security Income is required to be verified and dated within six months prior to the certification date. When interpreting Social Security benefit letters, remember to use the gross amount before deductions, unless the deduction is for a prior overpayment of benefits. Since HUD considers Social Security benefits (including SSI & SSDI) to be fixed income sources, management may follow the Streamlining Rule for verification of income and is only required to obtain third-party documentation at move-in and at every third recertification. See Part 5.3(D)(8) below for more information.

The Social Security Administration (SSA) may no longer issue Social Security printouts or provide benefit verification letters. Clients can obtain an instant verification letter online by creating a personal mySocialSecurity account or by calling the national toll free number 1-800-772-1213 and using the automated application to have a letter sent via mail.

Benefits received through direct deposit or a Direct Express Debit Card are treated as income. In addition, the balance on a Direct Express Debit Card is also considered as an asset and must be verified consistent with the verification procedures for a savings account. A current balance must be provided and included as an asset in addition to the benefit income. This balance can be obtained through an online account service, a paper statement, or an ATM balance.

Delayed SS and SSI payments received as a lump sum are not counted as income, but are included as a lump sum asset (see the second income exclusion example on page 5-21 of HUD Handbook 4350.3). Delayed SS and SSI payments received as periodic payments are excluded from income (see item #13 in Exhibit 5-1 of HUD Handbook 4350.3).

When a Social Security cost of living adjustment (COLA) increase is announced, the increase must be factored into all income determinations with effective dates after the date the increase was announced. Recent COLA increases include:

- On October 19, 2011 the SSA announced a 3.6% COLA increase for 2012.
- On October 16, 2012 the SSA announced a 1.7% COLA increase for 2013.
- On October 30, 2013 the SSA announced a 1.5% COLA increase for 2014.
- On October 22, 2014 the SSA announced a 1.7% COLA increase for 2015.
- On October 15, 2015 the SSA announced there would be no COLA increase for 2016.
- On October 18, 2016 the SSA announced a 0.3% COLA increase for 2017.
- On October 13, 2017 the SSA announced a 2.0% COLA increase for 2018.
- On October 11, 2018 the SSA announced a 2.8% COLA increase for 2019.
- On October 10, 2019, the SSA announced a 1.6% COLA increase for 2020.
- On October 13, 2020, the SSA announced a 1.3% COLA increase for 2021.
- On October 13, 2021, the SSA announced a 5.9% COLA increase for 2022.
- On October 13, 2022, the SSA announced an 8.7% COLA increase for 2023.

## 2. Child Support Verification

IHCDA requires the following documentation to verify income from child support:

- The tenant must be asked on Income Certification Questionnaire if anyone in the household is **entitled** to receive child support.
- If the tenant is entitled and is currently receiving child support, a copy of the court order, divorce decree, or verification from the agency administering the child support payments must be received.
- If the tenant is receiving child support but there is no court order (i.e., the tenant has made an alternative arrangement with the child support payer), then the owner should attempt to obtain third-party verification from the source making the payments.
- If the tenant is entitled to receive child support but has not received a payment within the previous year, verification from the agency administering the child support payments must be received by the owner. In addition, an affidavit from the tenant to the owner certifying that a) the tenant is not receiving child support payments; b) the reason the tenant is not receiving the payments; and c) the efforts made by the tenant to receive the payments must be obtained. If there is a court order but the tenant has not made efforts to receive the child support, then the owner must count the full amount of court ordered child support as income.
- If the tenant is entitled to receive child support, but payments over the previous year have been sporadic (i.e., more than one-third of the payments have not been paid), then the owner may average the payments received over the previous year to project anticipated income for the next 12 months. The owner should document the file with the previous 12-month history.

### 3. Unemployment and Welfare Benefits

When anticipating income from unemployment, the owner must annualize the weekly benefit amount regardless of whether the benefit end date suggests that benefits will last for the full year. The owner may not use the total maximum benefit amount, the remaining benefit amount, or an average of the benefits received.

The only exception is if the tenant knows a date on which he or she will return to work or begin a new job. In this case, the owner would calculate unemployment benefits up until the hire date and then calculate employment income for the rest of the year. IHCD will expect to see third-party verification of the unemployment benefits and an employment verification showing the start date for the job, including all other information applicable to employment.

Welfare payments in the form of Temporary Assistance to Needy Families (TANF) are included in household income. Food stamps are not included as household income.

Settlement payments from claim disputes over unemployment or welfare are treated as lump sum assets. However, lump sum payments caused by delays in processing periodic payments in unemployment or welfare are included as income (see page 5-18 and Figure 5-3 on page 5-19 of HUD Handbook 4350.3).

### 4. Employment Income

Owner must calculate the total anticipated employment income for the next 12 months based on current income and any verifiable changes. Employment income must be third-party verified when possible.

If utilizing tenant-provided documents:

- For tenants with jobs that provide steady employment, the owner must obtain the number of paystubs that covers the most recent two consecutive months of payments.
- For tenants with jobs that are seasonal or sporadic, the owner must obtain documentation that covers the entire previous 12-month period.

If employment verification indicates a range of hours worked, IHCD will calculate based on the average hours worked, not the highest in the range.

Note: IHCD no longer requires a year-to-date (YTD) calculation as part of income calculation. If the owner agent chooses to utilize a year-to-date calculation methodology, they must be consistent when calculating income for all households.

### 5. Recurring Gifts / Regular Contributions to Household

Any regular contributions and gifts to the household from persons not living in the unit must be included in annual income. This includes payments paid on behalf of the family and other cash or noncash contributions provided on a regular basis. Temporary, nonrecurring, or sporadic contributions or gifts are not counted.

Groceries provided directly to the household (not money given to buy groceries) are excluded. Additionally, childcare payments paid directly to the childcare provider on behalf of the tenant are excluded.

Recurring gifts/contributions should be third-party verified when possible by having the contributor sign a self-certification stating the amount and frequency of the gift/contribution.

## **6. Income of Students and Student Financial Assistance**

When full-time students who are 18 years of age or older are dependents of the household, only a maximum of \$480 of their total annual earned income is counted in the total household income calculation. Continue to count the full amount of unearned and asset income.

When full-time students who are 18 years of age or older are the head-of-household, co-head, or spouse, the full amount of earned, unearned, and asset income is counted in the total household income calculation.

Student financial assistance must be counted as part of total household income and third-party verified through the school for all households receiving Section 8 assistance. However, financial assistance is not included as part of annual household income for households that do not receive Section 8 assistance. For Section 8 recipients, all forms of financial assistance in excess of cost of tuition (not including cost of books, room and board, and other class fees) are included as income. This includes grants, scholarships, private assistance, educational entitlements, etc. but does not include loans.

There are two exceptions to this rule:

- i. The student is over the age of 23 with dependent children; or
- ii. The student is living with his or her parents who are receiving Section 8 assistance.

If the Section 8 recipient meets one of the previous exemptions, then financial assistance is not included as part of total household income and does not need to be verified.

## **7. Periodic Payments and Withdrawals**

The full amount of periodic payments from annuities, insurance policies, retirement funds, pensions, and disability or death benefits is included in annual income. Additionally, the withdrawal of cash or assets from an investment received as periodic payments should be counted as income. If benefits are received through periodic payments or withdrawals, the remaining amount held in the account is **not** counted as an asset. These types of sources should only be counted as an income or asset source, not as both. See HUD Handbook 4350.3, REV-1, CHG-4, Chapter 5, Part 5-6 L and 5-6 P.

## **8. Verifying Fixed Income Sources**

### **General Rule and Definition of Fixed Income**

The “Streamlining Administrative Regulations for Public Housing, Housing Choice Voucher, Multifamily Housing, and Community Planning and Development Programs Final Rule” (a.k.a. the Streamlining Rule) provides a simplified manner of verifying fixed income sources effective April 7, 2016. IHEDA has adopted these streamlining rules to verify fixed income as described below.

Per the Streamlining Rule, as codified through regulation in 24 CFR Part 5.657 and Part 982.516, fixed income sources are defined as “periodic payments at reasonably predictable levels.” Fixed income sources include the following:

- Social Security payments, including Supplemental Security Income (SSI) and Supplemental Disability Insurance (SSDI);
- Federal, state, local, and private pension plans;
- Annuities or other retirement benefit programs, insurance policies, disability or death benefits, or other similar types of periodic receipts; and
- Any other source of income subject to adjustment by a verifiable COLA or current rate of interest.

Fixed income sources must initially be verified through third-party verification. The owner is not required to reverify until the household’s third recertification and every three recertifications thereafter (referred to as the “triennial

verification”). For years that do not require third-party verification, the owner utilizes the existing verification form and applies an adjustment factor that comes from either (1) a public source (e.g., the Social Security Administration’s annual COLA announcement) or (2) tenant-provided third-party generated documentation. The adjustment factor used must be verified and documented in the file. If no public or third-party verification of the COLA/increase is available, then a traditional verification must be obtained.

### **Special Rule When 90% or More of Household Income is from Fixed Income Sources**

The “Streamlining Administrative Regulations for Multifamily Housing Programs and Implementing Family Income Reviews Under the Fixing America’s Surface Transportation (FAST) Act Interim Final Rule” (a.k.a. the FAST Act) further expands the streamlining rule for verifying fixed income sources effective March 12, 2018. IHEDA has adopted these additional streamlining rules to verify fixed income as described below.

When 90% or more of a household’s gross income comes from fixed income sources (as defined above), in addition to the streamlining requirements above, the owner may accept the household’s self-certification of income sources that are not fixed during years that do not require the full “triennial verification.”

Example 1: Household where fixed income source is 90% or more of gross income. Example assumes the project is subject to recertification of income.

- Move-in: Owner obtains full verification of all income sources.
- 1<sup>st</sup> Recertification: Owner obtains verification of COLA increases for fixed income sources and applies the adjustment to the previously obtained verification of the fixed income source (from the move-in file). Non-fixed income sources are verified by self-certification of the household, as long as the household certifies an amount that is less than 10% of the total gross household income. If non-fixed income sources are greater than 10% of gross household income, they must be verified through the traditional verification methodology.
- 2<sup>nd</sup> Recertification: Owner obtains verification of COLA increases for fixed income sources and applies the adjustment to the previously obtained verification of the fixed income source (from the move-in file). Non-fixed income sources are verified by self-certification of the household, as long as the household certifies an amount that is less than 10% of the total gross household income. If non-fixed income sources are greater than 10% of gross household income, they must be verified through the traditional verification methodology.
- 3<sup>rd</sup> Recertification: Owner obtains full verification of all income sources, similar to what was done at the time of move-in.
- 4<sup>th</sup> Recertification: Owner obtains verification of COLA increases for fixed income sources and applies the adjustment to the previously obtained verification of the fixed income source (based on the 3<sup>rd</sup> recertification file). Non-fixed income sources are verified by self-certification of the household, as long as the household certifies an amount that is less than 10% of the total gross household income. If non-fixed income sources are greater than 10% of gross household income, they must be verified through the traditional verification methodology.
- Process continues to cycle as demonstrated above.

Example 2: Household where fixed income source is less than 90% of gross income. Example assumes the project is subject to recertification of income.

- Move-in: Owner obtains full verification of all income sources.
- 1<sup>st</sup> Recertification: Owner obtains verification of COLA increases for fixed income sources and applies the adjustment to the previously obtained verification of the fixed income source (from the move-in file). Non-fixed income sources are third-party verified.
- 2<sup>nd</sup> Recertification: Owner obtains verification of COLA increases for fixed income sources and applies the adjustment to the previously obtained verification of the fixed income source (from the move-in file). Non-fixed income sources are third-party verified.

- 3<sup>rd</sup> Recertification: Owner obtains full verification of all income sources, similar to what was done at the time of move-in.
- 4<sup>th</sup> Recertification: Owner obtains verification of COLA increases for fixed income sources and applies the adjustment to the previously obtained verification of the fixed income source (based on the 3<sup>rd</sup> recertification file). Non-fixed income sources are third-party verified.
- Process continues to cycle as demonstrated above.

**D. Differences in Reported Income**

The management agent should give the applicant/tenant the opportunity to explain any significant differences between the amounts reported on the application/questionnaire and amounts reported on third-party verifications in order to determine actual income. The explanation of the difference should be documented in the tenant file on a clarification form or self-affidavit.

**E. Zero Income Households**

It is possible that a household will have total annual income of \$0. This is possible if the household is receiving rental assistance, food stamps, and other forms of assistance that are not counted as income. However, it is often the case that households claiming to be zero income are in fact receiving some type of recurring gift from friends or family members (see part 5.3(D)(5) above).

If an individual applicant/tenant within the household has zero income, that individual must complete IHEDA Form #15 “Non-employed Status Certification” or a similar form. This form asks the household member to certify that he or she has no employment, allows them to answer questions about other forms of income, and provides an option to claim zero income but explain that another household member pays for all expenses.

If the entire household is claiming zero income, the household must complete IHEDA Form #27 “Zero Income Certification and Basic Needs Questionnaire” or a similar form. This form asks the household to identify how various expenses will be paid and often serves as a way of catching recurring gifts and contributions to the household.

While zero income households do exist, it is the responsibility of management to prove due diligence when reporting households as zero income. Zero income households can raise a red flag for auditors, especially if the household that is claiming zero income is responsible for a portion of rent.

**Part 5.4 Annual Income**

**A. Whose Income and Assets are Counted?**

Member	Employment Income	Unearned/asset income
Head of household	Yes	Yes
Spouse/ Co-head	Yes	Yes
Other adult	Yes	Yes
Foster adult	Yes	Yes
Dependent Child Under 18	No	Yes
Full-time student over 18 *	See Note Below	Yes
Foster child under 18	No	Yes
Non-members (live-in aides, guests, etc.)	No	No

\*If a full-time student over 18 is a dependent of the household, only a maximum of \$480 of earned income is included in annual household income.

## B. Income

Annual income is defined as the gross amount of anticipated earned and unearned income to be received by all adult members of the household (18 years of age and older, including full-time and part-time students) and the gross unearned income of minors during the 12 months following the date of certification or recertification.

Per HUD Handbook 4350.3, the owner must generally use current circumstances to anticipate income. However, if information is available on known changes expected to occur during the year, the owner must use that information to determine the total anticipated income. Two common challenges include:

1. **Unsecured income:** IHCD does not require owners to include unsecured income sources when calculating household income. For example, if an applicant or tenant is unemployed IHCD does not require that individual to anticipate income he or she may earn if a job is secured, unless it is verifiable that a job has been secured for a future start date.
2. **Sporadic or seasonal income:** The owner must use reasonable judgment to determine the most reliable method of calculating income in scenarios where income fluctuates. If income cannot be determined using current information, the owner may anticipate income based on the income that was earned within the last 12 months prior to the income determination. However, prior year's income should not be used if information is available that shows the situation has changed.

Any income or asset source not specifically excluded must be included. For information regarding annual income inclusions and exclusions and how to calculate annual income, see Chapter 5 of HUD Handbook 4350.3 in Appendix A. Exhibit 5-1 lists income inclusions and exclusions and Exhibit 5-2 lists asset inclusions and exclusions.

Note that income limits are based on gross annual income, not adjusted annual income. Allowances commonly used in some federal housing programs, such as child care allowance, elderly household allowance, dependent allowance, handicapped assistance allowance, medical deductions, etc., are not permitted to be subtracted from the household's gross income to determine income eligibility for program assisted units. Adjusted income is only calculated to determine the rent to charge households exceeding 80% AMI in HOME-assisted units as described in Part 3.1 C.

## C. Assets

### Assets Defined

Assets are items of value, other than necessary personal items. In general terms, an asset is a cash or noncash item that can be converted to cash. Income from assets must be taken into consideration when determining the eligibility of a household. Asset information (asset value and income from assets) must be obtained at the time of application and at recertification, if applicable. All asset sources must be verified.

The market value of an asset is its dollar value on the open market. The cash value of an asset is the market value minus reasonable expenses incurred to convert the asset to cash, including for example:

- Penalties or fees for converting financial holdings. Any penalties, fees, or transaction charges incurred when an asset is converted to cash are deducted from the market value to determine its cash value.
- Costs for selling real property. Settlement costs, real estate transaction fees, payment of mortgages/liens against the property, and any legal fees associated with the sale of real property are deducted from the market value to determine equity in real estate.

If an asset is not effectively owned by an individual, do not include as a household asset. An asset is not considered "effectively owned" by an individual when the asset is held in the individual's name but the asset and income it earns accrue to the benefit of someone else who is not a member of the family, and that other person is responsible for taxes on income generated by the asset.

Any income or asset source not specifically excluded must be included. For more information regarding net household asset inclusions and exclusions, and how to determine the value of and income from assets, see Chapter 5 of HUD Handbook 4350.3 in Appendix A, specifically Section 5-7 and Exhibit 5-2.

\*NOTE: More income sources (including benefits such as Social Security) are being paid onto special pay cards / prepaid debit cards instead of through direct deposit into a checking or savings account. These cards are included as assets and are verified in the same way as a savings account. A current balance must be provided and included as an asset in addition to the benefit income being counted as income. This balance can be obtained through an online account service, a paper statement, or an ATM balance.

#### Asset Income

1. Actual Income from Assets

The income generated by an asset, such as interest or a dividend. This is counted as income even if the income is not received by the household, for example if the interest or dividend is automatically reinvested into the asset. When net household assets (cash value of all assets) are up to \$5000, the actual income from assets is always the income used. When net family assets exceed \$5000 then the actual income must be compared to the imputed income from assets (see below) and the higher amount is used for income determination.

2. Imputing Income from Assets

If net household assets (cash value of all assets) is greater than \$5000, asset income (which must be included as part of total gross household income) will be the greater of: a) actual asset income; or b) net household assets multiplied by the HUD approved passbook rate (the "Imputed Income from Assets").

Previously, the passbook rate was locked at 2% for many years. However, IHCD will now determine a rate reflective of the national average per HUD guidance. Recent rates are listed below:

- Prior to 2/1/15: 2.00%
- For certifications effective 2/1/15 and after: 0.06%

3. Disposed of Assets

Assets disposed of for less than fair market value are included as assets for a period of two years from the date of disposal. The amount to be included as an asset is the difference between the cash value of the asset and the amount that was actually received (if any) in the disposition of the asset. This rule only applies if the difference between the cash value and the amount received is greater than \$1000.

Assets disposed of for less than fair market value as a result of foreclosure or bankruptcy or those lost through a separation or divorce settlement are not included in this calculation.

4. Assets Owned Jointly

If assets are owned by more than one person, prorate the asset according to the percentage of ownership. If the percentage of ownership is not specified, prorate the asset evenly among all owners. HUD Handbook 4350.3 notes that "determining which individuals have ownership of an asset requires collecting as much information as is available and making the best judgment possible based on that information."

#### **D. Computing the Total Household Income**

After all income and asset information has been verified for a household, all included sources of income are added together to calculate the total household income. In order for the household to qualify for a program assisted unit, the total household income must be at or below the income limit in effect at the time of tenant certification. If the total household income is greater than the income limit, then the household cannot be certified for a program assisted unit. Income and assets must be calculated in accordance with the Section 8 methodology as described in 24 CFR 5.609 and in further detail in Chapter 5 of HUD Handbook 4350.3. Any income and asset source not specifically excluded from household income must be included.

Remember, income limits are based on gross annual income, not adjusted annual income. Allowances commonly used in some federal housing programs, such as childcare allowance, elderly household allowance, dependent allowance, handicapped assistance

allowance, medical deductions, etc., are not permitted to be subtracted from the household's gross annual income to determine income eligibility. Adjusted income is only calculated to determine the rent to charge households exceeding 80% AMI in HOME-assisted units as described in Part 3.1 C.

## Part 5.5 Annual and Interim Income Recertification Requirements

### A. Recertification for HOME and HTF-assisted Units

The owner must perform, at least on an annual basis, an income recertification for each low-income household and receive documentation to support that certification. The owner may choose one of three options when deciding when to perform annual recertifications.

1. Recertification may be performed at the anniversary date of the initial move-in certification; or
2. Recertification may be performed at lease renewal; or
3. Recertification may be performed on an annual schedule where all households are verified at the same time every year (for example, owner may choose to annually recertify every existing household on January 1<sup>st</sup>).

Owners may utilize effective dates when performing tenant certifications. Therefore, the tenant may sign the tenant certification on or before the date the certification takes effect. **All income and eligibility verifications must be dated no more than six months prior to the effective date of the tenant certification.** The owner should have language in the tenant certification documents indicating that the tenant must inform the recipient of any changes of income or household composition that may occur between the date the tenant signs the certification and the effective date of the certification.

Whenever a recertification indicates that the composition of the household has changed, program eligibility must be re-evaluated. Composition changes include a birth, a death, a new tenant moving into the household, and/or an existing tenant vacating the household. In the event that a new member is added to a qualifying household, the following steps must be taken:

1. The new household member should complete an Application and an Income Certification Questionnaire and management must complete verification of income and assets
2. The new household member's income must be included as part of the household's certified income. The combined household income must be compared to the maximum allowable income limit in effect at the time and based on actual household size.

Written third-party documentation verifying all income and asset sources reported by the household is required at initial occupancy and annually at recertification. See Part 4.3 for more information on the income and asset verification process.

### B. Recertification for Units that are Not HOME or HTF-Assisted

The owner must perform, at least on an annual basis, a household and rent update for each low-income household. The owner may choose one of three options when deciding when to perform annual recertifications.

1. Recertification may be performed at the anniversary date of the initial move-in certification; or
2. Recertification may be performed at lease renewal; or
3. Recertification may be performed on an annual schedule where all households are verified at the same time every year (for example, owner may choose to annually recertify every existing household on January 1<sup>st</sup>).

A recertification file for CDBG, CDBG-D, or NSP units will only include the following documentation: a new Tenant Income Certification Form (using Form #39) and the renewal lease and all lease addenda. Verification of income and assets is not necessary at recertification for these programs. It is also unnecessary to complete a Questionnaire at recertification. If the unit is also tax credit or HOME or HTF-assisted, those program recertification rules will apply.

## Part 5.6 Lease and Rent Requirements

All residents occupying program units must be certified and under a lease no later than the time that the household moves into the unit. A signed lease is required for all permanent supportive housing and permanent rental housing units. All residents of transitional housing, emergency shelters, and migrant farm worker housing must sign a program agreement.

A signed lease must be in effect for each household/unit. Once executed, the lease terms cannot be modified without at least 30 day written notice to the tenant in accordance with Indiana Code 32-31-5-4.

#### **A. Lease or Program Agreement Requirements**

A signed lease must be in effect for each year that a household resides in a unit. A new lease and/or a lease renewal addendum must be completed annually. Leases must reflect the correct date that the household moves into or otherwise takes possession of the unit.

A unit must be leased directly to the household, not to an organization that is providing services to the household.

The household may have a cosigner, if necessary, but the cosigner must sign a self-affidavit stating that (1) they will not reside in the unit and (2) disclosing whether or not they will be providing income to the household in the form of rent or utility payments or other recurring gifts. If income is provided, this must be treated as recurring gift income per Part 5.3 (D)(5).

At a minimum, the lease language must include (but is not limited to), the following. Note: Language about programmatic requirements may be included in a lease addendum instead of the main body of the lease.

1. The legal name of all parties to the agreement and all other occupants;
2. Address and description of the unit to be rented;
3. The date the lease becomes effective;
4. The term of the lease (must be for at least one year unless there is a mutual agreement between tenant and owner for a shorter period);
5. The rental amount;
6. Language addressing security deposits;
7. Language or Lease Addendum acknowledging receipt of the Fair Housing and Lead-Based Paint Brochures;
8. The utility allowance requirements, including a clear breakdown of which utilities are owner-paid and which are tenant-paid;
9. The use of the premises including language addressing that only members listed on the lease/TIC may dwell in the unit, that the unit must be the household's primary residence, and that the unit may not be sublet;
10. The rights and obligations of the parties, including the obligation of the tenant to recertify annually (or more frequently as required);
11. Language addressing income decreases and increases (i.e., for HOME-assisted units the 80% rule), utility allowance increases/decreases, basic rent changes (in Rural Development or 236 Developments), household composition changes, student status changes (for HOME-assisted units) or any other change and its impact on the tenant's rent and eligibility. The owner must give at least 30 day written notice prior to increasing rent.
12. Language addressing the right of the development and/or other funding providers to enter the assisted-unit for physical inspections;
13. Description of the lease renewal process;
14. Description of the termination process (must give at least 30 days notice);
15. Signature of all tenant(s) 18 and older or emancipated;
16. Signature of owner/property manager; and
17. Date of execution.

As a convenience to its partners, IHCD provides the following sample lease addendum documents (available on [IHCD's compliance webpage](#)) and strongly encourages use of these forms. The VAWA Lease Addendum is mandatory:

- Lease Addendum for Units Participating in Section 42 (see Form 9A);
- Lease Addendum for Units Participating in HOME (see Form 9B);
- Lease Addendum for Units Participating in HTF/CDBG/NSP (see Form 9D)
- Lease Renewal Addendum (see Form 10);
- Lease Addendum- Unit Transfer (see Form 44);
- Lease Addendum- Rent Decrease due to Utility Allowance Increase (see Form 45); and
- IHCD VAWA Lease Addendum (MANDATORY FORM)-This form is mandatory for projects with HTF funds, that received a commitment of HOME funds on or after December 16, 2016, or that have tax credits. The September 2022 revision of the

IHCDA VAWA Lease Addendum must be used for all move-ins dated on or after January 1, 2023. Exception: if a HUD VAWA lease addendum is required, that lease addendum may be used instead.

- If the project includes Low Income Housing Tax Credits with HOME or HTF, use the HOME/HTF VAWA lease addendum. There is no need to also use the tax credit VAWA lease addendum. Only one VAWA lease addendum is required per household.

At a minimum, the Program Agreement for transitional housing should include (but is not limited to):

1. The date the Program Agreement becomes effective;
2. Signature of both resident and staff member;
3. The supportive services available;
4. Program guidelines, such as curfews, laundry, and recreation rules;
5. Program expectations for resident;
6. Maximum length of stay; and
7. List of items, if any, regarded as contraband.

## **B. Prohibited Lease Language**

Per 24 CFR 92.253(b), the following items within a lease will constitute a finding of noncompliance:

1. Agreement to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease;
2. Agreement that the owner may seize or sell personal property without notice and a court decision (this does not apply to tenants who have vacated the property);
3. Excusing owner from responsibility- Lease cannot contain an agreement not to hold the owner or owner's agents legally responsible for any action or failure to act, whether intentional or negligent;
4. Waiver of notice stating the owner may institute a lawsuit without notice to the tenant;
5. Waiver of legal proceedings stating the owner may evict the tenant without instituting a civil court proceeding;
6. Waiver of jury trial;
7. Waiver of right to appeal or otherwise challenge a court decision;
8. Agreement to pay all legal costs regardless of the outcome. The tenant may be obligated to pay costs if he or she loses a court proceeding but may not be required to pay the owner's attorney fees or other legal costs if the he or she wins the court proceeding;
9. Agreement by the tenant (other than a tenant in transitional housing) to accept supportive services that are offered;
10. Language allowing a rent increase without at least 30 day written notice as per 24 CFR 92.252(f)(3); and
11. Language allowing termination of lease without at least 30 days written notice as per 24 CFR 92.253(c). For more information on termination of tenancy, see Part 5.6E below.

## **C. Rents and Security Deposits**

Rents on the program units may not exceed the maximum allowable rent. Any violation of overcharging rents is considered noncompliance and the owner will have to adjust rent and repay the overcharged rents (See Part 3.2 for more information on correctly implementing rent limits).

Security deposits must be treated in accordance with Indiana Code 32-31-3. Landlords cannot ask tenants to waive the security deposit regulations/rights under Indiana Code. Upon termination of a rental agreement, the full amount of security deposit must be returned to the tenant, minus any amount applied for (1) the payment of accrued unpaid rent, (2) the amount of damages (not including normal wear and tear) caused by the tenant, and (3) unpaid utility charges that the tenant is obligated to pay.

Per Indiana Code, within 45 days of the termination of the rental agreement, the landlord must send to the tenant (1) a written notice including an itemized lists of all charges to be deducted from the security deposit including the estimated cost of repair for each damaged item and (2) payment for the difference between the security deposit held and the amount of the damages claimed.

The landlord's liability (i.e., the 45-day timeframe) does not begin until the tenant has supplied in writing a new address to deliver the notice and refund. If the landlord fails to comply with these requirements, then the tenant is entitled to recover the full amount

of the security deposit and reasonable attorney's fees. Failure to provide notice of damages constitutes agreement that no damages are due and return of the full security deposit.

#### **D. Initial Minimum Term of Lease**

There must be a lease term of at least one year on all program units, unless the owner and the tenant have a mutually agreed upon a different lease term for the unit. All leases must, however, be for no less than 30 days.

Federal regulations do allow shorter leases for certain types of housing for homeless individuals. The following types of housing are exempt from the one-year minimum lease term:

1. Single Room Occupancy (SRO) units in developments receiving McKinney Act and Section 8 Moderate Rehabilitation assistance;
2. Single Room Occupancy (SRO) units intended as permanent housing and not receiving McKinney Act assistance;
3. Single Room Occupancy (SRO) units intended as transitional housing that are operated by a governmental or nonprofit entity and provide certain supportive services; or
4. Units that a) contain sleeping accommodations and kitchen and bathroom facilities; b) are located in a building which is used exclusively to facilitate the transition of homeless individuals to independent living within 24 months; and c) for which a governmental entity or qualified nonprofit organization provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing.

\*Note: If a development has units set aside in a building for homeless households, those tenants must have leases with at least one-year terms, unless the building's primary use is described in option 4 above or the owner and tenant have mutually agreed upon a shorter lease term.

\*\*Note: Leases must reflect the correct date of move-in, and/or the date the tenant takes possession of the unit.

#### **E. Eviction or Termination of Tenancy**

If a household cannot pay the rent or otherwise commits material violation of the lease, the owner has the same rights in dealing with the income-eligible tenant as with any other tenant, including, if necessary, eviction.

IHCDA encourages owners to utilize eviction only as a last resort and to implement eviction prevention strategies. IHCDA's Eviction Prevention and Low Barrier Screening webpage provides templates and resources for eviction prevention. Note: Permanent supportive housing projects and projects that received eviction prevention points under an IHCDA application scoring system are required to implement project-specific eviction prevention plans.

##### **1. Program Requirements and Guidance**

Regulations state that there must be just cause for eviction or other form of termination of tenancy (non-renewal of lease). This provision is often referred to as "good cause eviction." Language outlining actions that constitute good cause for eviction or termination of tenancy must be included in writing at the time of initial occupancy, preferably in the lease. Examples of good cause evictions may include nonpayment of rent, violations of the lease agreement, destruction or damage of the property, interference with other tenants, tenant fraud, or use of the property for an unlawful purpose. When dealing with tenant conduct issues, the owner is strongly encouraged to provide a written warning notice to the tenant prior to beginning eviction. This notice should include a statement that continued poor conduct could constitute a basis for future termination.

For transitional housing, good cause for termination includes completion of the tenancy period for transitional housing or failure to participate in any required supportive services.

##### **2. Items Not to be Construed as Good Cause for Eviction**

- An increase in income that causes the household to exceed the unit set-aside or the 80% (for HOME-assisted units) income limit is not considered good cause for eviction or termination of tenancy.

- Eviction is not permitted if such eviction is discriminatory based on the tenant/household's protected class under the Fair Housing Act (see Part 4.2A).
- Per the Violence Against Women Reauthorization Act of 2013 (see Part 4.2G) the owner/manager shall ensure that an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as either:
  - A serious or repeated violation of a lease by the victim or threatened victim of such incident; or
  - Good cause for terminating the assistance, tenancy or occupancy rights to housing of the victim of such incident.

**Owners may not terminate tenancy solely because a household experiences a change in income and existing tenants are never required to move because of an increase or decrease in income. This includes temporarily noncompliant HOME units in which the households exceed 80% of AMI.**

### **3. Documenting the File**

When the owner determines that eviction or termination of tenancy is necessary, the tenant must be served written notice and given no less than thirty (30) days to vacate. The owner must document the justification and keep copies of the notifications sent to the tenant.

When a tenant is evicted or a lease is terminated, IHCD will expect to see documentation outlining the specific cause for non-renewal. It is the owner's responsibility to document and defend the good cause for eviction if challenged in state court.

## Section 6: Compliance Monitoring Procedures

This section of the manual outlines IHCDAs' procedures for monitoring, in accordance with 24 CFR Part 92, 24 CFR Part 93, 24 CFR Part 570, and State Code for Development Fund. Remaining in compliance is solely the responsibility of the owner and is necessary to use and retain the funds allocated to the award.

Monitoring each development is an ongoing activity that extends throughout the affordability period. IHCDAs are required by regulation to conduct compliance monitoring and to take the appropriate steps when noncompliance is found.

### Part 6.1 Owner and Management Contacts

Correspondence from IHCDAs regarding compliance monitoring and physical inspections will be sent to the owner contact person and management company contact person provided in the development's Application. All other correspondence will be sent directly to the owner contact person. IHCDAs will annually update the contact information based on the information provided in the development's Annual Owner Certification of Compliance. As part of the Owner Certification documentation, the owner is able to elect one designated "primary owner contact" and one designated "primary management contact" per development. IHCDAs will allow no more than one primary owner contact name and address and one primary management contact name and address per development.

If at any time the contact person of the owner or management agent changes, it is the sole responsibility of the owner to inform IHCDAs in writing of such change with supporting documentation. Changes in ownership entity must be reported to IHCDAs via the "Property Ownership Change Form." Changes in management entity must be reported to IHCDAs via the "Property Management Change Form." The forms are available on [IHCDAs' compliance webpage](#). Changes in contact information only (no change to the ownership or management entity), can be reported via e-mail to IHCDAs' Data and System Specialist.

### Part 6.2 The Compliance Manual

IHCDAs provide this Compliance Manual as a resource to owners and management agents. The manual describes the compliance regulations that the owner and management agent must follow and the compliance monitoring procedures used by IHCDAs. **An amended Compliance Manual will be released periodically and the newest edition overrides all previous editions. Except where otherwise noted, all amendments to the Compliance Manual apply to all developments, regardless of year of funding.** All appendices to the Compliance Manual are available online on [IHCDAs' Compliance Webpage](#).

### Part 6.3 Annual Owner Certification of Compliance

#### A. The Annual Owner Certification

The owner must annually certify project compliance to IHCDAs under penalty of perjury. The Annual Owner Certification of Compliance is due on or before January 31<sup>st</sup> of each year and certifies information for the preceding 12-month period. Complete submission includes finalizing the Annual Owner Certification questions, submitting all tenant events in the online reporting system, and payment of annual monitoring fees (if the project has tax credits). A submission is not complete until the owner representative completes the finalization process by selecting "Finalize Year" in the online reporting system.

The first annual owner certification is due by January 31<sup>st</sup> of the year following the year of the award's closeout date. **However, the owner must begin reporting tenant events in the online system with the first tenant move-in.** The report covers the period January 1 – December 31 of each year and is due to IHCDAs by the close of business January 31<sup>st</sup> of the next calendar year.

Through these reports, the owner must annually certify that:

1. The award meets the required set-aside per the award agreement.
2. The owner has completed an Tenant Income Certification form and supporting documentation to support the certification for each low-income household, including for HOME-assisted units documentation proving student status eligibility.

3. All units in the development are for use by the general public and no finding of discrimination under the Fair Housing Act occurred for the award. All units are used on a non-transient basis (except for transitional housing units allowed under the award agreement).
4. All units in the development are suitable for occupancy, taking into account all federal, state, and local health, safety, and building codes and the state or local unit of government responsible for making building code inspections did not issue a report of a violation for any building or unit in the award.
5. Fair housing, equal employment opportunity, and lead-based paint information is posted, as required by IHCD. Each beneficiary of a program assisted unit has been given a lead-based paint and fair housing brochure as required by IHCD. Documentation of each beneficiary's receipt of the brochures is being maintained throughout the affordability period and is available for inspection by IHCD.
6. No low-income units in the building became vacant during the applicable year; or one or more low-income units in the building became vacant during the applicable year and reasonable efforts were/are being made to rent such units or units of comparable size in the building to eligible tenants.
7. No tenant of any low-income unit in the award experienced an increase in income above the limit allowed; or income of tenants of a low-income unit in the award increased above the limit allowed, and the next available unit of comparable or larger size in the award was or will be rented to eligible tenants;
8. Each low-income unit in the award was restricted as provided under the program and state requirements;
9. The development is in continuing compliance with all promises, covenants, set-asides and agreed upon restrictions as set forth in the application for the Award;
10. The unit types, gross rents, utility allowance, and actual rents;
11. All tenant facilities included in the award under the program and state regulations, such as swimming pools, recreational facilities, and parking areas, are provided on a comparable basis without charge to all tenants of the award;
12. The development has at least one smoke detector on each level of the rental dwelling unit;
13. There have been no changes in entity ownership or if there have been, IHCD has been provided with all details and all necessary documentation; and
14. The development is otherwise in compliance with the applicable laws, rules, regulations, and ordinances.

Starting with the 2018 report (due January 31, 2019) IHCD will only accept electronic submissions of Annual Owner Certifications for all rental projects. Hardcopy versions will no longer be accepted.

Annual Owner Certifications forms and Beneficiary Reports for Shelters and Migrant Farm Worker Housing must be submitted in the format provided by IHCD. IHCD will not accept any Owner Certifications or Beneficiary Reports that are not in the same formation as provided or that are hand-written.

## **B. Online Tenant Event Reporting and Beneficiary Reports**

[The Indiana Housing Online Management System](#) was designed as a tool for IHCD to receive Annual Owner Certifications and conduct compliance checks.

All assisted multi-family rental awards, except shelters and migrant farm worker housing, are required to enter tenant events using IHCD's Indiana Housing Online Management system. Tenant events include move-ins, move-outs, annual recertifications, unit transfers, rent and utility allowance changes, household composition updates, and student status updates. Tenant events that must be reported online do not include interim recertifications performed for other programs, such as Section 8 or RD. In order to obtain the maximum benefits from the Indiana Housing Online Management system it is required that all tenant events be entered into the applicable system within 30 days of the event date.

Therefore, it is mandatory that all tenant events be submitted electronically using the Indiana Housing Online Management website for all developments that contain IHCD assisted units (e.g. HOME, CDBG, CDBG-D, NSP, HTF, Tax Credits, Section 1602, TCAP, Bonds, and/or Development Fund/Trust Fund). This online tenant event reporting process eliminates the former process of submitting a hardcopy "Beneficiary Report Spreadsheet."

To use the rental reporting system or register to become a user, please visit the [Indiana Housing Online Management System](#).

IHCDA will set up the buildings for a project in the online reporting system and approve one project owner web user. It is then the responsibility of that project owner web user to approve designated management web users and to set up the individual units within the buildings.

After reviewing the Owner Certification and the online tenant events, IHCDA will notify the owner in writing of any errors or incompleteness and will allow an appropriate Correction Period. All correspondence to the owner will be sent electronically.

## Part 6.4 IHCDA Review and Inspections

IHCDA reserves the right to review a development's tenant/unit files and related records either via desktop review (files submitted electronically to IHCDA offices) or onsite at the development and to perform physical inspections as deemed necessary throughout the Affordability Period.

- All properties will be subject to tenant file audits and physical unit inspections once every three years throughout the affordability period. The monitoring and inspection sample size will be determined as follows:
  - For projects with one to four assisted units, 100% of the assisted units will be monitored/inspected.
  - For projects with more than four assisted units, at least 20% of the assisted units, but no fewer than four units, will be monitored/inspected. For physical inspections, at least one assisted unit in each building will be inspected.
- Inspectable areas under the Uniform Physical Condition Standards (UPCS) will be inspected for all buildings. Inspectable areas include site, building exterior, building systems, and common areas.

However, IHCDA reserves the right to inspect the files and/or physical units at any time at its discretion, with or without advance notification to the owner. Decisions to monitor/inspect more frequently may be based on tenant complaints or IHCDA's assessment that a project is high risk. A project may be deemed high risk based on compliance issues identified through the Annual Owner Certification or on financial issues identified through the annual Financial Review (if applicable).

### A. Tenant File Audits

All awards will have a tenant file audit in the same year the development has a physical inspection. IHCDA staff or a representative of IHCDA will conduct the audit. The audit will either be conducted onsite or through a desktop review. Regardless of whether it is done onsite or offsite, the audit will consist of the following:

1. Fair Housing and Equal Opportunity - Are the fair housing and equal opportunity posters displayed at:
  - The property location if a single site project; and/or
  - At the site where residents apply for housing.
2. Lead Based Paint Educational Information (if applicable) - Is the Lead Based Paint Poster displayed at:
  - The property location if a single site project; and/or
  - At the site where residents apply for housing.
  - Annual recertification of the unit passing a visual assessment (as required by the Lead-Based Paint regulations, if applicable).
3. Affirmative Marketing- Projects with five or more assisted units must follow Affirmative Fair Housing Marketing procedures.
  - IHCDA will review the Affirmative Marketing Plan process utilized in determining the market least likely to apply for housing, and how the units were marketed to this segment of the population. IHCDA will review documentation including brochures, advertisements, and marketing materials that were utilized;

- Affirmative Fair Housing Marketing Plans must be evaluated at least once every five years and updated according to the policies of the Fair Housing and Equal Opportunity Office of the Department of Housing and Urban Development (HUD). All updated Affirmative Fair Housing Marketing Plans must be submitted to IHCD A.
  - The Affirmative Fair Housing Marketing Plan must be created using HUD Form 935.2A.
4. Tenant Selection Plans - IHCD A will review the written tenant selection plans utilized by management. The plan should allow IHCD A staff to determine how tenants are selected and the criteria used for approving or denying applicants. See Part 4.2(E) for more information on Tenant Selection Plans.
  5. VAWA Compliance (if applicable), including records to demonstrate that tenants have been properly notified of their rights under VAWA through required notices and lease addendum documents. See Part 4.2(G) for information on VAWA applicability and requirements.
  6. Utility Allowance - IHCD A will review documentation of utilities paid by the tenant versus those paid by the owner.
  7. Tenant Files - For each unit randomly selected, a file must be available containing the following documentation:
    - Lease (original and current);
    - Lease addenda forms- e.g., HOME or HTF/CDBG/NSP Program Lease Addendum, VAWA Addendum, etc.
    - Application (for move-in files);
    - Tenant Income Certification (TIC) form;
    - Income Certification Questionnaire;
    - Income and asset verifications;
    - Student status certifications (for HOME-assisted units)
    - Utility allowance and supporting documentation;
    - Documentation of the receipt of the applicable brochures (Fair Housing & Lead Based Paint); and
    - For tenants receiving tenant-based Section 8 vouchers, a copy of the Housing Assistance Payment (HAP) Contract and the current HAP Amendment from the Public Housing Authority or a copy of the current HUD Form 50058. For tenants in Section 8 Project Based Voucher (PBV) units, a copy of the current HUD Form 50058 showing the amount of rental assistance. For tenants in Section 8 Project Based Rental Assistance (PBRA) units, a copy of the current HUD Form 50059 showing the amount of rental assistance.

**When performing an onsite (at the development or management office) review, IHCD A will:**

1. As a courtesy, IHCD A will notify the owner and/or management agent two weeks in advance of the intended site visit. **However, IHCD A reserves the right to inspect any unit/tenant file at any time at its discretion without prior notification.**
2. The auditor will randomly choose a selection of 20% of the files for review;
3. Provide an exit interview summary to management representative;
4. Inform the owner of any findings of noncompliance with regard to such review; and
5. Allow the owner 30 days to notify IHCD A of any correction of noncompliance.

NOTE: If files are not available or are found in such a condition that an IHCD A Auditor cannot effectively review the files, the 30-day correction period will begin immediately.

**When performing an in-house (at IHCD A office) file audit, IHCD A will:**

1. Notify the owner in writing which unit files have been selected for review;
2. Respectfully request that either (1) electronic copies of selected files and documentation be submitted through an IHCD A approved file transfer site. Contact your IHCD A Compliance Auditor to set up the file transfer folder; or (2) hardcopies of

the selected files and documentation be shipped to IHCD or hand delivered by the owner or a representative of the owner. Do not send original copies. All documents will be shredded at completion of the audit.

3. Ask for a current rent roll and utility allowance information;
4. Shred all files and confidential information after the review is completed;
5. Give a time frame in which the tenant file documentation must be submitted. Currently, IHCD requires files to be submitted within two weeks of notification of the monitoring;
6. Inform the owner of any findings of noncompliance with regard to such review; and
7. Allow the owner 30 days to notify IHCD of any correction of noncompliance.

NOTE: The desktop notification/file request letter will include a checklist of the items that must be included in each tenant file submitted. When reviewing copies of the files, IHCD will expect to see all of the applicable documents listed on the checklist, in the approximate order that they are listed (leasing information, tenant information, income verifications, asset verifications, other clarifications). Auditors will not review files that are submitted in a disorderly or incomplete fashion.

## B. Physical Inspections

Prior to performing an onsite development inspection, IHCD or its third-party agent will:

1. Notify the owner and/or the management company of the date and approximate time the inspection will take place.
2. Request that the owner and/or management company representative be present and accompany the inspector throughout the entire inspection process.

It is imperative that **all** units be available for interior and exterior inspections (vacant units, occupied units, and common areas inclusive). Physical inspection is not limited to vacant units. Staff will ask to inspect specific units whether the unit is occupied or not and will not give advance notice as to which units will be inspected. Units to be inspected will be selected randomly.

After performing an onsite development inspection, IHCD will:

1. Provide to the property representative, if needed, a copy of a Critical Violations Letter identifying all exigent health, safety, and/or fire hazards observed at the time of the inspection that require immediate corrections. **All exigent health and safety issues identified in the Critical Violations Letter must be corrected within 24 hours and IHCD must be notified of the completed corrections within 72 hours. Critical violations that are not corrected within 24 hours will be fined \$250 per day, starting the first hour after the 24-hour correction period expires.**
2. Send a copy of the inspection report to the owner and management company indicating a correction time frame.
3. Request that all noncompliance issues be corrected within the time frame specified in the inspection report.
4. Request that legible copies of the proof of the corrections, in the form of work orders, receipts, and/or invoices, along with an owner-signed affidavit be forwarded to IHCD within the allotted time frame indicated in the inspection report.
5. Schedule a second inspection if necessary;'
6. Review the supporting documents of correction for correlation with the inspection report.
7. Send correspondence indicating that no further corrective actions regarding the physical condition of the property are needed at this time, or contact the owner with what deficiencies still exist.

For more information, see the Inspection Process Flow Chart in Appendix D.

## C. Financial Review for HOME & HTF

For each HOME or HTF project with 10 or more units (total units, not assisted units), IHCD must annually review the financial condition of the project to determine "the continued financial viability of the housing" in accordance with the Financial Oversight requirements of 24 CFR 92.504(d)(2). IHCD must take actions, as feasible, to correct any problems identified through financial review.

IHCD's underwriting staff will request the following items be submitted by the owner in order to conduct the financial review:

1. Property specific financial information for the previous year:
  - Most recent audited financial statements for the property (if applicable); or

- Property's internal financial statements – including Balance Sheet and Profit and Loss Statement
- 2. Monthly rent rolls for the previous year
- 3. Property insurance and tax payments for the previous year:
  - Evidence of property insurance payment; and
  - Evidence of property tax payment.

Note- if the project financials are incorporated into the owner entity's overall financial statements, IHCDCA will request to review the owner entity's financial statements (most recent audit and/or internal financial statements) to make sure the entity has sufficient financial capacity to manage and sustain the project.

Exception: If all sufficient financial information can be gathered from the financial information submitted as part of the property's Annual Owner Certification of Compliance, IHCDCA staff will not request submission of additional financial statements.

When performing a financial review, IHCDCA will:

1. Notify the primary owner and the management contacts for the property in writing and provide two weeks to submit the requested documents, unless sufficient information can be gathered from the Annual Owner Certification
2. Evaluate the financial capacity of the property
3. Inform the owner and the management of any financial concerns. If concerns exist, the owner and/or management will be subject to more frequent financial submission (monthly or quarterly) so that IHCDCA can closely monitor financial performance.

## **Part 6.5 Noncompliance**

Noncompliance is defined as a period of time during the affordability period in which an award, development, specific building, or unit fails to satisfy program requirements.

For more information on noncompliance, see Section 7.

## **Part 6.6 Amendments to Compliance Monitoring Procedures**

The compliance monitoring procedures and requirements set forth herein are issued by IHCDCA pursuant to applicable HUD regulations and published guidance. These provisions may be amended by IHCDCA for purposes of conforming with the regulations and guidance and/or as may otherwise be appropriate as determined by IHCDCA. In the event of any inconsistency or conflict between the terms of these procedures and the monitoring procedures set forth in such regulations, the provisions set forth in the regulations shall control.

In addition, IHCDCA periodically releases Real Estate Department (RED) Notices containing updates on policies, forms, and other issues relevant to program compliance. These notices are available online at the [RED Notices Webpage](#).

## **Part 6.7 Procedures for the Transfer of Program Units**

The owner must notify IHCDCA's General Counsel and Chief Real Estate Development Officer immediately of any Disposition or Sale of any units in the award before the Affordability Period expires. If the new owner will maintain the affordability restrictions, IHCDCA will work with the owner to amend appropriate documents. If the new owner will not maintain the affordability restrictions, IHCDCA will be required to recapture the original award amount from the original owner.

# Section 7: Noncompliance

## Part 7.1 Types of Noncompliance

Generally, a development is out of compliance if during the Affordability Period:

1. The development no longer meets the set-aside requirements of the application, the income and rent restriction requirements of the program, or other requirements for the units which are set-aside; or
2. There is failure to submit the annual utility allowance documentation, Annual Owner Certification, or tenant events, along with any applicable supporting documentation in a timely manner; or
3. An ineligible household resides in a program unit (including a student ineligible household for HOME-assisted units); or
4. A unit or building is no longer suitable for occupancy or otherwise in violation of physical inspection standards; or
5. The owner does not comply with requests to conduct a physical inspection or file audit.

## Part 7.2 Consequences

Penalties include, but are not limited to, the following:

1. Penalty fees paid to IHCDCA such as re-inspection fees (see Part 6.6) and/or late fees (see Part 6.6);
2. Recapture of award funds (see Part 7.6 below);
3. Negative points on future applications;
4. Rejection of future applications (i.e. suspension or debarment);
5. Repayment of rent overages;
6. Mandatory attendance at an IHCDCA sponsored compliance training; and/or
7. An increase in the frequency of IHCDCA audits/inspections

## Part 7.3 Notification of Noncompliance to Owner by IHCDCA

IHCDCA is required to provide written notice of noncompliance to the owner if:

1. Any required submissions are not received by the due dates;
2. Tenant files including Tenant Income Certification, Income Questionnaires, supporting verification documentation, and rent records are not made available during an audit or not submitted when requested by IHCDCA; and/or
3. The development is found to be out of compliance through physical unit inspection, Annual Owner Certification review, file audit, and/or other means.

IHCDCA will not provide documentation for specific awards to more than one contact person in an ownership entity for each award. If other individuals within an ownership entity wish to receive such documentation, they must obtain it from the contact person designated as the "Primary Owner" contact.

## Part 7.4 Notification of Noncompliance to IHCDCA by Owner

If the owner and/or management agent determines that a unit, building, or an entire development is not in compliance with program requirements, IHCDCA should be notified immediately. The owner and/or management agent must formulate a plan to bring the development back into compliance and advise IHCDCA in writing of such a plan. The owner and/or management agent must keep documentation outlining: the noncompliance issue, date the noncompliance issue was discovered, date that noncompliance issue was corrected, and actions taken to correct noncompliance.

Additionally, the owner is responsible for replacing temporarily noncompliant HOME units (units where the household exceeds 80% AMI) as per the guidelines in Part 3.1 C.

## Part 7.5 Correction Period

Should IHCD discover (as a result of an inspection or review or in any other manner) that the development is not in compliance with program federal or state requirements, IHCD shall notify the owner. The owner is to commence appropriate action to cure such noncompliance.

The owner shall have a maximum of 30 days from the date of notice to cure the noncompliance. If IHCD determines that there is good cause, an extension may be granted.

## Part 7.6 Recapture

If funds are recaptured because the housing no longer meets affordability requirements, regardless of entity or activity, these funds must be returned to IHCD.

The award recipient must ensure that a lien and restrictive covenant is executed against every property constructed, rehabilitated, or acquired, in whole or in part, with HOME, HTF, CDBG, CDBG-D, or NSP funds. Upon occurrence of any of the following events during the Affordability Period, the entire sum secured by the lien, without interest, shall be due and payable by developer and/or owner upon demand. Repayment may be demanded upon: (1) Transfer or conveyance of the real estate by deed, land contract, lease, or otherwise, during the Affordability Period; (2) Commencement of foreclosure proceedings by any mortgagee (or deed in lieu of foreclosure), within the Affordability Period; (3) Units not being used as a residence by a qualifying tenant or not leased according to the program affordability requirements. The award recipient will be responsible for repaying IHCD for any HOME, HTF, CDBG, CDBG-D, or NSP funds utilized for any housing constructed, redeveloped, rehabilitated, or acquired that does not meet the affordability requirements throughout the Affordability Period.

## Part 7.7 Suspension and Debarment

### A. Purpose of Policy

As a recipient of federal and state funds, IHCD has a moral, and often legal, obligation to ensure that those funds are used as intended. To fulfill this duty, IHCD must have the discretion to suspend or debar those who misuse, abuse or otherwise fail to use funds correctly.

The purpose of this policy is to define suspension as it relates to misuse of funds on IHCD funded rental projects during the affordability period and to explain how suspension is recommended, approved, and maintained.

This policy, while in alignment with the agency's overall suspension policy, applies specifically to the programs administered and monitored by IHCD's Real Estate Development Department. These programs include Section 42 Low-income Housing Tax Credits, the HOME Investment Partnerships Program, Tax Credit Assistance Program (TCAP), Section 1602 Exchange, Community Development Block Grants (CDBG & CDBG-D), the Neighborhood Stabilization Program (NSP), the National Housing Trust Fund (HTF), and the Indiana Affordable Housing & Community Development Fund ("Development Fund").

### B. Scope of Persons Affected

This policy applies to all persons directly or indirectly receiving, administering or associated with funds from an IHCD Program whether or not such person has a contractual relationship with IHCD, including but not limited to the following persons:

- Contractors
- Sub-contractors
- Applicants
- Award/ grant recipients
- Sub-recipients
- Sub-grantees
- Property owners
- Developers
- Syndicators
- Administrators
- Management companies/agents
- Individuals employed by, contracted by or affiliated with any of the persons listed

Such persons will be referred to as "affected persons" in this policy. For the purposes of this policy, the term "person" shall be interpreted broadly to mean any individual, trust, cooperative, association, organization, or any other entity.

## C. Definitions

Affected person is defined as any person directly or indirectly receiving, administering, or associated with funds from an IHCD Program whether or not such person has a contractual relationship with IHCD. For the purposes of this policy, the term “person” shall be interpreted broadly to mean any individual, trust, cooperative, association, organization, or any other entity. Examples of types of affected persons can be found in Part B above.

Debarment is defined as a determined period of time, not to exceed five (5) years, during which an affected person is prohibited from participating in an IHCD Program(s). See Part K below for additional information on debarment.

Suspension is defined as an *indefinite but temporary* status assigned to an affected person making it ineligible to apply for additional funding until such time that the suspension status is revoked. Suspension is generally invoked for failure to meet federal and/or state compliance obligations and reporting requirements. Other considerations leading to suspension could include but are not limited to: fraudulent activity, financial health concerns, and poor record of past performance. Unlike debarment, suspension is not for a set amount of time and can generally be revoked as soon as IHCD’s concerns and any identified issues have been resolved.

Parts D through G below discuss suspension recommendations based on noncompliance. Other scenarios resulting in the recommendation of suspension are not discussed in detail but will follow the same basic guidelines herein, including issuance of (1) preliminary issue letters giving the affected person the opportunity to satisfy concerns, (2) a suspension recommendation letter notifying the affected person that suspension has been recommended, and (3) an official notice that suspension has been invoked.

Suspension does not waive any compliance requirements or release the project from its affordability period. A suspended organization must continue to keep its project(s) in compliance and work towards remedying any issues with the project(s) that caused the suspension recommendation. Failure to do so could result in further penalties as outlined in Part L below.

Suspension list is defined as IHCD’s internal roster of entities that have been officially suspended. IHCD will also maintain a list of entities recommended for suspension but not yet officially suspended. This may also be referred to as the “watch list.”

Suspension recommendation is defined as the act of an IHCD employee recommending (usually based on the persistence of uncorrected noncompliance) that an entity be disqualified from future IHCD funding by being placed on the IHCD’s Suspension List. A suspension recommendation does not implement an actual suspension until approved by the appropriate IHCD staff.

## D. Suspension Recommendation Based on Failure to Submit Annual Owner Certification

If an Annual Owner Certification is not received for a particular project/award, IHCD will send a notification letter to the designated contacts giving a final ten (10) day correction period to submit the Owner Certification. There are two possible results following issuance of this letter:

- If the Owner Certification is received, it will be reviewed by the assigned Compliance Auditor. Issues identified could result in a suspension recommendation.
- If the Owner Certification is not received, the organization will be recommended for suspension.

A recommendation for suspension can be made by any Compliance Auditor by issuing the letter entitled “Notice of Suspension List Recommendation.” This letter serves only as a notice that suspension has been recommended, not that suspension has actually gone into effect. The language from the letter states:

“Regrettably, at this time I must inform you that your project and organization have been recommended for IHCD’s Suspension List. In order to have this recommendation rescinded, you must submit the files necessary to demonstrate compliance.”

If suspension is implemented, a letter will be issued directly by the Chief Real Estate Development Officer as described in Part H below.

## **E. Suspension Recommendation Based on Failure to Correct Owner Certification Issues**

After review of an Annual Owner Certification of Compliance, the affected person is sent either a “no issue” or an “issues identified” letter. If issues are identified, the owner/recipient is given a thirty (30) day correction period to respond. There are three possible results following issuance of an issues identified letter:

- If a correction response is received that adequately resolves the issues, the Annual Owner Certification is closed and an “issues resolved” letter is sent.
- If a correction response is received but the issues are not adequately resolved, a follow-up letter is sent identifying the remaining issues and giving an additional ten (10) days to submit additional documentation. If no response is received after this additional ten (10) days, a follow-up letter is sent giving a final ten (10) day correction period. This letter states that failure to submit the requested response will result in recommendation of suspension.
- If no response is received during the correction period, a follow-up letter is sent giving a final ten (10) day correction period. This letter states that failure to submit the requested response will result in recommendation of suspension.

If the response is not received after the final letter is sent, the affected person will be recommended for suspension. A recommendation for suspension can be made by any Compliance Auditor by issuing the letter entitled “Notice of Suspension List Recommendation.” This letter serves only as a notice that suspension has been recommended, not that suspension has actually gone into effect. The language from the letter states:

“Regrettably, at this time I must inform you that your project and organization have been recommended for IHCD’s Suspension List. In order to have this recommendation rescinded, you must submit the files necessary to demonstrate compliance.”

If suspension is implemented, a letter will be issued directly by the Chief Real Estate Development Officer as described in Part H below.

## **F. Suspension Recommendation Based on Failure to Cooperate with File Audit Request**

If files are not submitted for a desktop request or the auditor is not given access to files for an onsite audit, IHCD will send a notification letter to the designated contacts giving a final ten (10) day correction period. There are two possible results following issuance of this letter:

- If the files are received, they will be reviewed by the assigned Compliance Auditor. Issues identified could result in a suspension recommendation as defined in Part G below.
- If the files are not received, the organization will be recommended for suspension.

A recommendation for suspension can be made by any Compliance Auditor by issuing the letter entitled “Notice of Suspension List Recommendation.” This letter serves only as a notice that suspension has been recommended, not that suspension has actually gone into effect. The language from the letter states:

“Regrettably, at this time I must inform you that your project and organization have been recommended for IHCD’s Suspension List. In order to have this recommendation rescinded, you must submit the files necessary to demonstrate compliance.”

If suspension is implemented, a letter will be issued directly by the Chief Real Estate Development Officer as described in Part H below.

## **G. Suspension Recommendation Based on Failure to Correct Audit Issues**

After completion of a tenant file audit, the affected person is sent either a “no issues” or an “issues identified” letter. If issues are identified, affected person is given a ninety (90) day correction period to respond. There are three possible results following issuance of an issues identified letter:

- If a correction response is received that adequately resolves the issues, the audit is closed and an “issues resolved” letter is sent.
- If a correction response is received but the issues are not adequately resolved, a follow-up letter is sent identifying the remaining issues and giving an additional thirty (30) days to submit additional documentation. If no response is received

after this additional thirty (30) days, a follow-up letter is sent giving a final ten (10) day correction period. This letter states that failure to submit the requested response will result in recommendation of suspension.

- If no response is received during the correction period, a follow-up letter is sent giving a final ten (10) day correction period. This letter states that failure to submit the requested response will result in recommendation of suspension.

If the response is not received after the final letter is sent, the affected person will be recommended for suspension. A recommendation for suspension can be made by any Compliance Auditor by issuing the letter entitled “Notice of Suspension List Recommendation.” This letter serves only as a notice that suspension has been recommended, not that suspension has actually gone into effect. The language from the letter states:

“Regrettably, at this time I must inform you that your project and organization have been recommended for IHCDAs Suspension List. In order to have this recommendation rescinded, you must submit the files necessary to demonstrate compliance.”

If suspension is implemented, a letter will be issued directly by the Chief Real Estate Development Officer as described in Part H below.

## **H. Suspending an Organization**

After a suspension recommendation letter has been sent, the recommendation will be reviewed by the Chief Real Estate Development Officer and Director of Real Estate Compliance. This review will ensure that the proper steps were taken by IHCDAs staff and that the issue (1) has not been resolved and (2) warrants the suspension recommendation.

If suspension is invoked, the affected person will receive an official “Notice of Suspension” letter stating that the organization has been added to IHCDAs Suspension List effective the date of the letter. All suspension letters will come directly from the Chief Real Estate Development Officer, not from a Compliance Auditor. A copy of the letter will be sent to IHCDAs Executive Director and General Counsel. If the affected person is involved in the CDBG program, an Office of Community and Rural Affairs (OCRA) representative will also be notified of the suspension. Copies of the suspension letter and all prior notifications will be maintained by IHCDAs in the file for the applicable project/award.

Suspension is at the sole discretion of IHCDAs. Unless otherwise stated, a suspension or debarment will apply to not only the affected person, but to any entity owned, controlled, or managed by the affected person or a spouse, domestic partner, child, sibling, aunt, uncle, niece, nephew, cousin, grandchild, parent or grandparent of the affected person, including “in-laws”, “half” or “step” relations.

## **I. Maintaining a Suspension and Debarment List**

IHCDAs will internally maintain a list of entities recommended for suspension, suspended entities and debarred entities (for more information on debarment see Part K below). This list will be available to IHCDAs management and appropriate staff. Because the suspension list will apply to the entire agency and be made available across departments, suspension based on performance on a Real Estate award could affect future funding not only under the QAP and SIP processes, but also from other IHCDAs departments’ funding sources and from OCRA’s CDBG program.

## **J. Removal from Suspension List / Reinstating an Organization**

An affected person can be removed from the suspension list if the original issues that invoked the suspension are sufficiently resolved, the necessary documentation proving such is submitted to IHCDAs, and the project is considered otherwise in compliance.

To request removal from the suspension list, the affected person should send a letter to IHCDAs requesting such removal and providing a narrative of how the outstanding issues have been resolved. All necessary supporting documentation to prove compliance should be attached to the letter. This packet must be submitted to the Chief Real Estate Development Officer. Upon receipt of the request, the Chief Real Estate Development Officer, Director of Real Estate Compliance, and the Compliance Auditor that originally recommended suspension (if applicable) will meet to review and make a determination. Removal from the suspension list is at the sole discretion of IHCDAs.

## **K. Debarment**

In its sole discretion, IHCDAs may debar an affected person from participation in an IHCDAs Program(s) for a period not to exceed five (5) years based on reasonable evidence that the affected person has behaved or is behaving improperly with regard to an IHCDAs

Program(s), whether intentionally or unintentionally. The difference between suspension and debarment is that a suspension is used to allow IHCD to determine whether a debarment or other action is warranted pending completion of an investigation. Therefore, suspension is an indefinite but temporary measure, while debarment is for a set amount of time.

An IHCD decision to debar an affected person may be appealed within thirty (30) calendar days of notice to the affected person of that decision. The appeal must be in writing and contain, at a minimum, the reasons for the appeal and supporting documentation or evidence. The appeal should be sent to IHCD, 30 South Meridian Street, Suite 1000, Indianapolis, IN 46204, Attn: Chief Real Estate Development Officer. The Chief Real Estate Development Officer will discuss with IHCD legal, and respond to the appeal within forty-five (45) calendar days of the receipt of the appeal. The response to the appeal is not appealable.

An IHCD decision to suspend an affected person is not appealable because it does not represent final disposition on the matter.

#### **L. Potential Recapture**

In addition to suspension or debarment by IHCD, affected persons found to be out of compliance with the HOME, CDBG, CDBG-D, or NSP programs are subject to all recourse under the regulations and statutes of those programs, including possible recapture of funds. If an affected person remains on the suspension or debarment list for more than ninety (90) days and has not informed IHCD of corrective actions in progress, IHCD will consider that affected person noncompliant and begin the process of recapturing funds for the project(s) that invoked the suspension.

### **Part 7.8 | Tenant Misrepresentation or Fraud**

If fraud/misrepresentation of information is discovered while processing an application for residency, the applicant should be denied. Handling tenant fraud becomes more problematic when the fraud is discovered at recertification. In this scenario it may be determined that the household was never initially qualified and has been inappropriately occupying the unit. Fraud is considered material noncompliance with the lease and program requirements and is therefore grounds for termination of tenancy. For more information on termination of tenancy, see Part 5.6 E.

If tenant fraud/misrepresentation is discovered the following steps should be followed immediately.

1. Notify IHCD that an incident of tenant fraud has been identified and provide a written explanation of what happened. As long as the incident was identified prior to an IHCD audit and a corrective plan is in place, the incident will not be considered noncompliance.
2. Begin the process of removing the fraudulent unqualified household and replacing it with a qualified household. Every lease should include language stating that providing inaccurate information regarding program eligibility is cause for termination of tenancy. Thus, the fraud becomes not only a violation of program rules but also a lease violation and grounds for eviction.

In order to try and reduce the number of instances of tenant fraud/misrepresentation, management should ensure that the forms used in tenant files address the seriousness of providing fraudulent information. As mentioned above, all leases should include language that fraud is grounds for eviction or non-renewal of a lease. Additionally, it is a best practice to include language on other forms signed by the tenant/applicant stating that the forms are signed under penalty of perjury. By including such language, the recipient is showing a zero tolerance policy for tenant fraud.

The following documentation may help the owner establish that tenant fraud/misrepresentation occurred:

- Documentation proving the tenant was made aware of program requirements and prohibitions and did not follow those requirements such as signed lease documents and program agreements.
- Documentation showing that the tenant intentionally misstated or withheld information including but not limited to:
  - Evidence that false names or Social Security Numbers were used;
  - Copies of falsified, forged, or altered documents;
  - Proof that tenant omitted material facts that were known to the tenant such as proof of income and assets sources that were not disclosed by the tenant; and
  - Admission by the tenant that information was falsified or omitted.

## Part 7.9 | Owner Fraud

If IHCDCA becomes aware of an apparent act of fraud by the owner, management company, or other entity involved with the management and compliance of a project, the project will be considered out of compliance and the following steps will be taken:

1. The entity will be placed on IHCDCA's suspension list until further investigation is completed.
2. If warranted, IHCDCA will debar the entities involved as outlined in Part 7.7.
3. If warranted, IHCDCA will recapture the funds as outlined in Part 7.6.
4. Other noncompliance penalties such as increased auditing, rejection of future applications, etc. as outlined in Part 7.2 may also apply.

## Section 8: Glossary

**Actual Income from Assets:** The income generated by an asset, such as interest or a dividend. This is counted as income even if the income is not received by the household, for example if the interest or dividend is automatically reinvested into the asset. When net family assets (cash value of all assets) are up to \$5000, the actual income from assets is always the income used. When net family assets exceed \$5000 then the actual income must be compared to the imputed income from assets and the higher amount is used for income determination.

**Affirmative Fair Housing Marketing Plan:** Also referred to as the AFHMP or Affirmative Marketing Plan. A plan in which the owner/management of a property confirms that they are following Fair Housing regulations and are making efforts to market the property to those groups determined to be least likely to otherwise apply for residency. All projects with five (5) or more HOME-assisted units must have an AFHMP in place.

**Affordability Period:** The length of time for which a development must continue to meet the program requirements. IHCD considers the date final completion information is entered into IDIS as the start date for the project affordability period.

**AMI:** Area Median Income

**Annual Household Income:** Annual income of all persons who intend to permanently reside in a unit.

**Annual Income:** Total current anticipated income to be received by a tenant from all sources including assets for the next twelve (12) months.

**Annual Income Recertification:** Document by which the tenant re-certifies his/her income for the purpose of determining whether the tenant will be considered low-income according to the provisions of the program.

**Application:** Form completed by a person or household seeking rental of a unit in an award. An application should solicit sufficient information to determine the applicant's eligibility and compliance with federal and IHCD guidelines.

**Applicant:** Any recipient, principal and participant, including any affiliates associated with an award that is seeking an award of HOME, CDBG, or Development Fund monies.

**Area Median Income:** The median income for a specific county as published by HUD.

**Assets:** Items of value, other than necessary and personal items, which are considered in determining the eligibility of a household.

**Asset Income:** The amount of money received by a household from items of value as defined in HUD Handbook 4350.3.

**Available Unit:** A vacant unit that is not under any contractual agreement between the owner and a prospective resident. A unit is not available if an applicant has already signed a lease but has not yet moved into the unit.

**Award:** The amount of money allocated for rental housing or homebuyer units to a recipient of HOME, CDBG, or Development Fund award.

**Bifurcation of Lease:** The act of amending a lease to remove some household members while keeping others on the lease. A bifurcation of lease may be required under VAWA to remove a tenant who engages in criminal activity related to domestic violence, dating violence, sexual assault or stalking without removing or otherwise penalizing the victim of such activity.

**Cash Value of Asset:** The market value of an asset minus reasonable expenses incurred to convert the asset to cash.

**Certification Year:** The twelve (12) month time period beginning on the date the unit is first occupied and each twelve (12) month period commencing on the same date thereafter.

**Completion Date:** The date of project completion, defined by HUD as the date that all necessary title transfer requirements and construction work have been performed; the project complies with the requirements of 24 CFR 92.2 and the property standards of 24 CFR 92.251 or 24 CFR 570; the final drawdown has been disbursed for the project; and the project completion information has been entered in the disbursement and information system (IDIS) established by HUD. IHCDCA considers the completion date as the start date for the project affordability period.

**Comparable Unit:** A unit that is equal or greater than another unit in terms of size, number of bedrooms, and amenities.

**Compliance:** The act of meeting the requirements and conditions specified under the law and the program requirements.

**Correction Period:** A reasonable time as determined by the Authority for a recipient to correct any violation as a result of noncompliance.

**Current Anticipated Income:** Gross anticipated income for the next twelve (12) months as of the date of occupancy that is expected to be received by the tenant(s) including imputed income.

**Debarment:** A determined period of time, not to exceed five (5) years, during which an affected person is prohibited from participating in an IHCDCA programs

**Developer:** Any individual and/or entity who develops or prepares a real estate site for residential use to be an award.

**Disabled (for Fair Housing purposes):** For purposes of the Fair Housing Act, disability is defined as a person who has/is:

- A physical or mental impairment which substantially limits one or more of such person's major life activities; or
- A record of having such an impairment; or
- Being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act).

**Due Diligence:** The appropriate, voluntary efforts to remain in compliance with all applicable program rules and regulations. Due diligence can be demonstrated through business care and prudent practices and policies. Due diligence is the establishment of internal controls, including but not limited to: separation of duties, adequate supervision of employees, management oversight and review (internal audits), third party verifications of tenant income, independent audits, and timely recordkeeping. IHCDCA expects all HOME, CDBG, and Development Fund awards to demonstrate due diligence.

**Earned Income:** Income from employment, including wages, salaries, tips, commission, bonuses, overtime pay, anticipated raises, and any other compensation. The earned income of all adult household members is included in the Annual Household Income calculation. The earned income of minors (members under age 18) is not included.

**Effective Date of Tenant Certification:** The date the Tenant Income Certification becomes applicable. For initial certifications, this date must be the move-in date of the tenant. For annual re-certifications, this date must be no later than one year from the effective date of the previous (re) certification.

**Effective Term of Verification:** A period of time not to exceed one hundred twenty (120) days. After this time, if the tenant has not yet moved in, a new, written third party verification must be obtained. The verification must be within the effective term at time of Tenant's Income Certification.

**Eligible Tenant:** The current tenant of the unit, so long as that tenant is eligible to occupy the unit under the requirements of HOME, CDBG, or Development Fund. This expressly includes a tenant whose income would not currently qualify under HOME, CDBG, or Development Fund, but who was qualified at the time of tenant's original occupancy of the unit.

**Emergency Transfer:** Under VAWA protections, an eligible tenant may be entitled to an emergency transfer to safe dwelling unit. All properties must create a VAWA compliant Model Emergency Transfer Plan using HUD Form 5381.

**Employment Income:** Wages, salaries, tips, bonuses, overtime pay, or other compensation for personal services from a job.

**Fair Market Value:** An amount which represents the true value at which property could be sold on the open market.

**Fixed Income Source:** Fixed income sources are defined by HUD as “periodic payments at reasonably predictable levels.” Fixed income sources can be verified using the Streamlining Rule. Fixed income sources include the following:

- Social Security payments, including Supplemental Security Income (SSI) and Supplemental Disability Insurance (SSDI);
- Federal, state, local, and private pension plans;
- Annuities or other retirement benefit programs, insurance policies, disability or death benefits, or other similar types of periodic receipts; and
- Any other source of income subject to adjustment by a verifiable COLA or current rate of interest.

**Fixed Units:** The HOME-assisted units remain the same throughout the affordability period.

**Floating Units:** The HOME-assisted units may change during the affordability period. Unit mix would be changed to maintain conformity during the affordability period so that the total number of HOME-assisted units meets the requirements set out in the application and recorded declaration. Each substituted unit must be comparable in terms of size, features, and number of bedrooms to the originally designated HOME-assisted unit.

**Foster Adult:** An adult, usually with a disability that makes him/her unable to live alone, who is unrelated to the tenant family but has been placed in their care. Foster adults are not counted as household members when determining household size and the applicable income limit.

**Foster Children:** Foster children are in the legal guardianship or custody of the State or foster care agency, but are cared for by foster parents in their home under a foster care arrangement with the custodial agency. Foster children are not counted as household members when determining household size and the applicable income limit.

**FSP Memos:** Notices published by IHCD’s Community Department to announce changes, updates, or clarifications on policies and issues affecting the HOME, CDBG, or at <http://www.in.gov/ihcda/2522.htm>, through the electronic newsletter IHCD INFO, and are also posted on the message board on the Indiana Housing Online Management rental reporting system (<https://ihcdaonline.com/>).

**Good-cause Eviction:** Rental Housing households cannot be evicted or have their tenancy terminated without “good-cause,” generally considered material violation of the lease. The actions that constitute good-cause for eviction or termination of tenancy must be given to the tenant in writing at the time of occupancy, preferably in the lease, as well in the property’s Tenant Selection Criteria.

**Gross Income:** See Annual Household Income.

**Gross Rent:** The gross rent for a unit is the sum of tenant portion rent + utility allowance + non-optional charges + tenant-based rental assistance.

**Gross Rent Floor:** the lowest amount of rent that the owner will ever be required to accept. The gross rent floor is the rent limit in effect at the time the funds are awarded. If the current applicable HOME limits drop below the gross rent floor, the owner is not required to accept lower rents.

**Group Home:** Housing occupied by two or more persons or families with common space/facilities for group use.

**Guest:** A visitor temporarily staying in a unit with the consent of the household. Guests are not treated as household members when determining household size and the applicable income limit, and their income is not included in Annual Household Income calculations.

**High HOME units:** HOME-assisted units reserved for households at or below 80% AMI.

**HOME Rent Limit:** The HUD published maximum rent amount, including a utility allowance and any non-optional fees. Rent limits are published by bedroom size.

**Household:** The individual, household, or group of individuals living in the unit.

**Imputed Income from Assets:** The estimated earnings of assets held by a tenant using the potential earning rate established by HUD (currently 2%).

**Income Limits:** Maximum incomes as published by HUD for awards giving the maximum income limits per unit for Low-Income (40%, 50%, 60%, or 80% of median) units.

**Inspection:** A review of an award which may be made annually by IHCD or its agent, which includes an examination of records, a review of operating procedures and a physical inspection of units.

**Joint Venture:** A combination of one or more independent entities that combine to form a new legal entity for the purpose of this Award.

**Lease:** The legal agreement between the tenant and the recipient which delineates the terms and conditions of the rental of a unit.

**Lease Rent:** The lease rent is the actual rent charged to the household by the owner, as defined in the lease. The lease rent may never exceed the maximum allowable rent or the applicable HOME rent limit.

**Live-in Care Attendant / Live-in Aide:** A person who resides with one or more elderly, near-elderly, or disabled persons. To qualify as a live-in care attendant, the individual (a) must be determined to be essential to the care and well being of the tenant, (b) must not be financially obligated to support the tenant, and (c) must certify that he/she would not be living in the unit except to provide the necessary supportive services. While some family members may qualify, spouses can never be considered a live-in care attendant since they would not meet qualifications (b) & (c).

**Low-income:** HUD uses the term “low-income” for households at or below 80% AMI and

**Low-Income Unit:** Any unit in a building if: such unit is rent-restricted, the individuals occupying such unit meet the income limitation applicable under federal and state requirements, and the unit is suitable for occupancy.

**Low HOME units:** HOME-assisted units reserved for households at or below 50% AMI.

**Management Company:** A firm authorized by the recipient to oversee the operation and management of the award and who accepts compliance responsibility.

**Market Value of Asset:** The dollar value of an asset on the open market.

**Maximum Allowable Rent:** The maximum allowable rent is the most an owner is permitted to charge for rent once tenant-paid utilities (except telephone, cable television, and internet) and other non-optional charges are deducted. The maximum allowable rent can never exceed the applicable HOME rent limit. May also be referred to as the “maximum chargeable rent” or the “net rent”.

**Maximum Allowable Rent Calculation:** Maximum Allowable Rent = HOME rent limit – utility allowance – any non-optional fees

**Maximum Chargeable Rent):** See Maximum Allowable Rent

**Median Income:** A determination made through statistical methods establishing a middle point for determining income limits. Median is the amount that divides the distribution into two equal groups, one group having income above the median and one group having income below the median.

**Minimum Set-Aside:** The minimum number of units that the recipient has elected and set forth in the application to be income and rent-restricted.

**Multi-Family Department (MFD) Notices:** Notices published by IHCD’s Multi-Family Department to announce changes, updates, or clarifications on policies and issues affecting

**Narrative Summary:** A description written by the Applicant of the need for the Award within the community and the Award itself. This narrative should give an accurate depiction of how this Award will benefit the particular community. Generally, the summary should include the following points:

1. Award and unit description
2. Amenities - in and around the Award
3. Area's needs that the Award will help meet
4. Community support and/or opposition for Award
5. The constituency served by the Award
6. Award quality
7. Award location
8. Effective use of resources
9. Unique features
10. Services to be offered
11. Address Allocation Plan points **MUST** include pages 3-9 of Form- A (the Application).

**Net Rent:** See Maximum Allowable Rent

**Noncompliance:** The period of time that an Award, specific building, or unit is ineligible for HOME, CDBG, or Award Fund because of failure to satisfy program requirements.

**Non-optional fee:** A fee charged for services/amenities that are mandatory (i.e. services that are required as a condition of occupancy). A fee may be charged for non-optional services, but the fee must be included in the gross rent calculation.

**Over-income Household/Unit:** For HOME purposes, a household is considered over-income if it exceeds 80% of AMI or for a Low HOME unit, if the household exceeds 50% of AMI. See Part 3.1 C for more information on properly handling over-income units.

**Passbook Rate:** The HUD approved rate for imputing assets. The current passbook rate is 2%.

**PHA:** Public Housing Authority.

**Protected Class:** One of the seven groups specifically protected by the Fair Housing Act. The seven protected classes are race, color, national origin, religion, sex, disability, and familial status.

**Reasonable Accommodation:** A change, exception, or adjustment in rules, policies, practices, or services when such a change is necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling, including public and common spaces. Under the Fair Housing Act, an owner must allow a reasonable accommodation unless doing so will be an undue financial burden or fundamentally alter the nature of the provider's operations.

**Reasonable Modification:** A change to the physical structure of the premises when such a change is necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling, including public and common spaces. Under the Fair Housing Act, an owner must allow a reasonable modification at the expense of the tenant, unless the change is one that should have already been included in order to comply with design and construction accessibility standards, in which case the owner will be responsible for paying for the modifications.

**Recipient:** Any individual, association, corporation, joint venture, or partnership that received HOME, CDBG, or Development Fund funding.

**Rent Limit:** The HUD published maximum rent amount, including a utility allowance and any non-optional fees. Rent limits are published by bedroom size.

**Qualified Unit:** A unit in a qualified low-income neighborhood occupied by qualified persons at a qualified rent.

**Second-party Verification:** Source documentation submitted to management by a tenant or applicant in order to disclose information about income or asset sources or other eligibility factors. Second-party verifications may only be used when third-party

verifications cannot be received or are not necessary (see Part 5.3 for more information). An example of second-party verification is a paystub or bank statement provided to management by the tenant/applicant.

**Section 8:** Section 8 of the United States Housing Act of 1937, as Amended.

**Self-certification:** A signed affidavit from a tenant or applicant used to clarify information or to provide information that cannot be verified through third-party or second-party documents.

**Service Animal:** An animal that assists an individual with a disability. This term includes service animals, therapy animals, companion animals, emotional support animals, and assistance animals. These animals are not treated as pets but rather as reasonable accommodations under Fair Housing.

**Set Aside:** Shall mean and require that units designated as “set aside” for a specific population may be used only for the identified population and for no other. If qualified tenants in the designated population are not available, the unit(s) must remain vacant.

**Special Needs Populations:** An award recipient may have committed in writing to set aside a percentage of total units in the award to qualified tenants who meet the state definition of “special needs population,” as provided in IC 5-20-1-.45 and must equip each unit to meet a particular person’s need at no cost to the tenant. Special needs populations include:

1. Persons with physical or development disabilities
2. Persons with mental impairments
3. Single parent households
4. Victims of domestic violence
5. Abused children
6. Persons with chemical addictions
7. Homeless persons
8. The elderly

**SRO Unit:** Single Room Occupancy Unit, defined as single room that may or may not have food prep and sanitary facilities.

**Streamlining Rule:** HUD’s Streamlining Administrative Regulations for Public Housing, Housing Choice Voucher, Multifamily Housing, and Community Planning and Development Programs Final Rule. Among other provisions, the rule provides a simplified manner of verifying fixed income sources effective April 7, 2016.

**Suspension:** An *indefinite but temporary* status assigned to an affected person making it ineligible to apply for additional funding until such time that the suspension status is revoked. Suspension is generally invoked for failure to meet federal and/or state compliance obligations and reporting requirements. Other considerations leading to suspension could include but are not limited to: fraudulent activity, financial health concerns, and poor record of past performance. Unlike debarment, suspension is not for a set amount of time and can generally be revoked as soon as IHCD’s concerns and any identified issues have been resolved.

**Suspension list:** IHCD’s internal roster of entities that have been officially suspended. IHCD will also maintain a list of entities recommended for suspension but not yet officially suspended. This may also be referred to as the “watch list.”

**Suspension recommendation:** The act of an IHCD employee recommending (usually based on the persistence of uncorrected noncompliance) that an entity be disqualified from future IHCD funding by being placed on the IHCD’s Suspension List. A suspension recommendation does not implement an actual suspension until approved by the appropriate IHCD staff.

**Temporarily noncompliant unit:** A unit is considered to be temporarily out of compliance when a household that originally income qualified becomes an over-income household. Temporary noncompliance is permissible and does not penalize the owner as long as the owner follows the correct steps to restore the HOME unit mix.

**Tenant:** Any person occupying the unit.

**Tenant/ Unit File:** Complete and accurate records pertaining to each dwelling unit, containing the Application for each tenant, verification of income and assets of each tenant, Annual Income Re-certification, utility schedules, rent records, Lease and Lease

addendum. Any authorized representative of IHCD or HUD shall be permitted access to these files upon receipt by award recipient or Management Company of prior written notice of not less than two calendar days.

**Third-party Verification:** A verification document submitted to management by a third-party entity in order to disclose information about the income or asset sources or other eligibility factors of an applicant or tenant. Third-party verifications must be sent to and received directly from the third-party source, not through the tenant or applicant. An example of third-party verification is an employment verification form completed by the employer.

**Triennial Verification:** Under the Streamlining Rule, fixed income sources must initially be verified through third-party verification, but the owner is not required to reverify until the household's third recertification and every three recertifications thereafter (referred to as the "triennial verification"). Triennial verification only applies if the owner can obtain an annual cost of living adjustment to apply to the previously verified benefit amount.

**Unearned Income:** Income from assets and benefit sources such as Social Security. The unearned income of all household members (regardless of age) is included in the calculation of Annual Household Income.

**Utility Allowance:** The amount of utilities for a particular unit, as set by a utility allowance schedule published by HUD, Rural Development, or the PHA, or established by a letter from the utility company which states the rates, an IHCD estimate, the HUD Utility Schedule Model, or an Energy Consumption Model as calculated by an approved engineer or licensed professional. For more information see Part 3.3.

**Vacant Unit:** A unit that is currently unoccupied, but was formerly occupied by a qualified household.

**VAWA:** The Violence Against Women Reauthorization Act of 2013, which provides protections against housing discrimination for victims of domestic violence, dating violence, sexual assault, or stalking.

**Verification:** Information from a third-party that is collected in order to corroborate the accuracy of information about income provided by applicants to an award.

**Very low-income:** HUD uses the term "very low-income" for households at or below 50% AMI.